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CHAIRPERSON: Good morning everybody.

MR SIBEKO: Thank you chair, Mr Esterhuyse confirms that he is still under oath.

5 CHAIRPERSON: Do you confirm that you are still under oath, say I do?

MR ESTERHUYSE: I do.

10 MR SIBEKO: Chair, before I proceed with Mr Esterhuyse's evidence, I have been asked to bring to your attention the existence of two further bundles that have been placed before you Chair and Commissioner Musi. One of the quotation files is a correspondence bundle of documents, which I shall allude to at the outset.

15 And the next bundle of documents contains declassified documents of Mr Esterhuyse and these would relate to the minutes which formed the subject of our submissions on a previous occasion being 25 April 2014 when we adjourned.

20 We believe the minutes have since been declassified, I noted though that there is a copy that I am aware of which has the signature of Mr Esterhuyse that is not included in these declassified bundles, in the declassified bundle.

25 However, on examination it does look similar to the one that he signed which has not been declassified. We shall attempt to deal with that during the course of the evidence.

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Having said that, may I ask the Chair and Commissioner Musi to turn your attention to the bundle of documents that contains correspondence, I have been asked by Mr Mdumbe to bring the following documents to the
5 Commissioner's attention.

The first document being an email from Jenna Snyman who has the, comes from the Strategic Litigation Unit, I Lawyers for Human Rights, it is a letter dated 29 April 2014, it was sent at 11h00am.

10 CHAIRPERSON: Sorry (indistinct) where does the letter appear?

MR SIBEKO: Chair, I do not have the index to that bundle of letters, but it is supposed to be the top most documents in the correspondence bundle.

15 MR MASILO: Chairperson, before you proceed, before you chair person, I know that my learned colleague, as part of the housekeeping issues, has referred to two quotation files, the one being correspondence.

We are not in possession of the correspondence
20 bundle, so it would be difficult for us to follow the deliberations insofar as that particular aspect is concerned. My learned colleague Mr Kruger also does not have a copy. My learned Mr Kruger on behalf of the DoD does not have a copy of the correspondence bundle.

25 CHAIRPERSON: (Indistinct)

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MR SIBEKO: Thank you chair, I was not aware that these documents were not given to the other people of interest in the house, however (Indistinct) if the Chair and Commissioner Musi has found the letter, it is the letter from
5 Gina Nyman of the Lawyers for Human Rights, dated 29 April it was sent at 11h00am addressed to Adv (Indistinct) Mdumbe, and (Indistinct) copied Annemarie Voss, subject, "re: APC 22 April 2014". It reads as follows:

10 *"Dear Adv Mdumbe, on Friday 25 April 2014, prior to Mr Esterhuysen being provisionally excused, it was placed on record before the Commission by Adv Sibeko that we intended to cross-examine this witness. Thereafter, the Commission*
15 *was adjourned until Monday 5 May 2014. Given the fact that we were informed during the proceedings of the Commission that it would not be sitting this week, it is impossible for us to attend at the*
20 *Commission tomorrow or the remainder of this week to proceed with our cross-examination of this witness. In the circumstances, we are forced to reserve the right to recall this witness after he*
25 *completes his evidence, should it still be*

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representatives of ARMSCOR and also representing Mr Esterhuysen. That letter reads as follows:

5 *“Evidence of Mr Heinrich De Vaal Esterhuysen, we refer to your email of Tuesday 29 April 2014 in which you informed us that the Commission will resume its proceedings for the evidence of Mr Esterhuysen on Wednesday 30 April 2014. We also refer to the correspondence between the Presidencies the department of defence and the Commission regarding the declassification of the minutes of the ministerial briefing held on 31 August 98’.*

10 *We refer to the proceedings of the Commission held on 25 April 2014 at this hearing; the chairperson of the Commission adjourned the proceedings and informed Mr Esterhuysen that his evidence would be postponed to a subsequent date after being given notice of one week. Members of the media were present at the Commission on Friday 25 April 2014 and took the note of these arrangements. We further note that the Commission then published this information on its website,*

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5 *stating that it is adjourned until 5 May*
2014. Accordingly members of the public,
particularly the Lawyers for Human Rights,
who have given notice of their intention to
cross-examine Mr Esterhuysen are not
aware of the proceedings, and accordingly
will be denied an opportunity to cross-
examine the witness. The Commission
should note that this will prejudice
10 *members of the public who may, on that*
ground, apply to have Mr Esterhuysen
recalled. ARMSCOR will object to such
applications and (Indistinct) inform the
Commission to take steps to ensure that
15 *members of the public are informed of the*
proceedings. We further call on the
Commission to confirm to us that no
application to recall Mr Esterhuysen will be
granted on the ground that the applicant
20 *was not aware of the dates on which Mr*
Esterhuysen would give evidence. In
conclusion it is on this basis that Mr
Esterhuysen will continue giving evidence
on Wednesday 30 April 2014. Kindly let us
25 *have this reassurance as soon as*

possible.”

Now chair, I frankly do not understand what is sought to be achieved by what is contained at paragraphs four and five:

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“A reassurance that Mr Esterhuyse’s testimony will continue provided that there is reassurance that he will not be recalled for cross-examination should the need arise.”

10

We accept that the proceedings were adjourned to later dates, or at least the evidence or Mr Esterhuyse was adjourned to a later date, pending the declassification of the various versions of minutes relating to the Ministerial briefing of 31 August 1998.

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It is so that the minutes, the issue relating or the controversy surrounding the declassification of those minutes have been resolved. And at the earliest possible opportunity the hearing was convened in order to try and finalise the evidence of Mr Esterhuyse.

20

In the circumstances, and one accepts that this week is one that has several public holidays and in terms of which people have made arrangements to be on holiday. And once, what appears to have been an assurance that the Commission would not be sitting this week, people naturally made arrangements. Unfortunately, we are sitting today and it does not seem that it would be an unreasonable request for

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those person who have indicated an intention to cross-examine Mr Esterhuyse, should the need arise to be afforded an opportunity to do so once they have become available. I am frankly unable to understand the request sought in the letter
5 from Bowman Gilfillan that I have just read to you where an assurance is sought that no further cross-examination will be (Indistinct) of Mr Esterhuyse should the need arise.

CHAIRPERSON: Is there anyone else who want to say something on this issue?

10 MR MASILO: Thank you Chairperson. Chairperson, yesterday after consultation with Mr Esterhuyse and ARMSCOR, a decision was taken to send, a decision was taken Chairperson to communicate to the Commission that we have noted that there is a request which for the witness to be before
15 the Commission on 24 hours' notice, and noted that such request was in essence not in line with the decision that was taken on Friday the 25th.

And as such it was our contention that it would prejudice members of the public as well as (Indistinct) in
20 cross-examining the witness. And it was on that basis that the request was communicated to the Commission. And, part of the request chairperson was so that the Commission is able to update its website so that it can be able to make sure that members of the public who may be interested and who keep
25 checking the website of the Commission are aware of the

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sitting of today because as I said at that point we were not aware that there was going to be any amendments to the website to update it to make sure that members of the public were aware, because as at 14h00 when we were sitting, the
5 website was not updated.

But, secondly, Chairperson ARMSCOR's contention was that it was going to be prejudicial to the witness to come before this commission whom at great costs ARMSCOR has to make sure that the witness is assisted and supported
10 accordingly.

And again, that this witness has to be recalled and that ARMSCOR would have to again once more be faced with a situation wherein they have to be at the Commission insofar as the witness is to be recalled for purpose of cross-examination,
15 which ought to have been dealt with once the witness was testifying and the evidence of the witness was completed.

And it was on that basis that the Commission was informed of the predicament and the challenges that ARMSCOR and the witness will seek and sought to bring back to the fore
20 so that the Commission can take note of that.

CHAIRPERSON: (Indistinct), Okay Adv Kuper, I do not suppose you have anything to say, Adv Kuper; I suppose you do not have anything to say on this subject.

MR KUPER: I am sorry chair, I did not realise it was
25 directed to me. And the answer is no, we have nothing to say.

CHAIRPERSON: Thank you (indistinct) all the concerns that have been provided (indistinct) I am not quite sure what Bowman is trying to achieve with the letter that they have written to us (indistinct). Secondly, (indistinct) has got a right to cross-examine the witness.

(Indistinct) must first make an application and if the Chairperson is satisfied that there are reasonable grounds for allowing a person to cross-examine a witness permission will be granted to that person, those rules still apply.

Secondly, if at any stage it becomes necessary for a witness (indistinct) to be recalled, that witness will be recalled. So, all those who might have an interest in cross-examining Mr Esterhuyse they have to come to the Commission and make an application.

If the applications are granted then Mr Esterhuyse could be recalled. For the time being I think we must proceed with the evidence of Mr Esterhuyse.

MR SIBEKO: Thank you chair, we do so presently. Mr Esterhuyse, you recall, if we could just ...(intervene)

CHAIRPERSON: Just hold on (indistinct) recall, can the witness confirm that he is still under oath?

MR SIBEKO: He has done so already chair.

CHAIRPERSON: He has done so, my apologies.

MR SIBEKO: Just to recap Mr Esterhuyse, you recall, if

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I may ask you to turn to tab 10 of your bundle of documents. Tab 10. That is, it starts at page 95. That is a directive that you stated in evidence was issued by General Post Office Du Preez regarding the functionalities and constitution of the International Office Management Committee is that correct?

MR ESTERHUYSE: That is correct Chairman.

MR SIBEKO: And on a cursory, if you look at the contents of that document you would recall that it sets out processes that had to be followed and it makes for an appointment of evaluation teams, and for the appointment of General Du Preez as the chairperson of that board, while you were appointed or referred to as the seconds/leader of that body.

MR ESTERHUYSE: That is correct chairman.

MR SIBEKO: Now at the end of that document page 100 of that document has a signature of lieutenant or General Du Preez is that correct?

MR ESTERHUYSE: That is correct.

MR SIBEKO: Now, annexed to that document is the director number 4 of 147 dated 8 August 1997 which is reported as MOD policy for dealing with international defence equipment offers in the MOD, do you see that?

MR ESTERHUYSE: I see that yes, thank you.

MR SIBEKO: Do you recall if the document we are discussing, that is the letter or the directive issued by General

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Du Preez ever required approval by the COD, that is the Council of Defence, or if he had authority to issue that directive himself?

MR ESTERHUYSE: Chair, (indistinct) this document in terms
5 of his own mandate, he does not ask for any particular mandate or authority for this committee. This in fact is the document that then refers to the International Office Management Committee.

MR SIBEKO: So if I understand you correctly, that
10 document and whatever is set out therein did not require approval by any higher authority?

MR ESTERHUYSE: Chair to my opinion not, because it is not asking for any authority for this committee in terms of execution and decision making powers within the strategic
15 defence package. It still remains within the framework of MODAC.

MR SIBEKO: Right, later on during the course of your evidence while dealing with that document you were referred to page 109, page 109 which appears to bear an inscription in
20 longhand which suggests the document, in that document that the policy was approved in council of defence on 8 August 1997 and it has a signature there, do you see that?

MR ESTERHUYSE: I see that yes Chairman.

MR SIBEKO: Now, if one compares the document at 109
25 and that on page 95, can you comment on these two

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documents?

MR ESTERHUYSE: Chair the document on 102, which is the directive for /147 precedes the document on page 95 and there is a reference in the document on 95 to the directive that is on 5 102, that is the connection. But that is the only connection that links the two documents.

MR SIBEKO: So, am I correct to say what appears to be an approval of the counsel of defence that appears at 109, it does not refer to an approval of anything relating to what 10 appears as from 95.

MR ESTERHUYSE: Chair the approvals in the document that relates to 147 is substantially more extensive than what General Du Preez writes in his document that is on page 95.

MR SIBEKO: In fact if one looks at the entire 15 documentation contained in tab 10 for example on those at 102 and 103, it is clear that 109 is in fact what appears at 103, is that correct?

MR ESTERHUYSE: Yes that is correct Chair.

MR SIBEKO: Right, now having resolved that matter, I 20 would like for you to just briefly in the most simplest of terms try to explain to us the best value equation which was supposed to be used as a tool by the evaluating teams in evaluating the different bids. I am aware that there is an attempt at making that explanation at page 151 of the bundle of 25 documents, if I could ask the Chair and Commission to turn to

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that page. And if you could explain that to the commissioners in a way that would be comprehensible, I know that last time you attempted to do this, it was after lunch and perhaps the brain was a bit tired after having consumed quite a lot of facts
5 earlier that day. Could you just take us through that so we can get to the actual evaluation process that we need to deal with today?

MR ESTERHUYSE: Commissioners I will be as brief as possible, because I know these elements have already been
10 exposed to the Commission by other witnesses. I have on page 151 compiled a very simplified model to explain the different concepts and to explain how we arrive at the best value.

Let me start by saying that the best value system is in fact the key to the procurement under tender conditions as
15 far as fair and equitable procurement is concerned. That element and the procedures that would follow to arrive at the best value is in fact the core of the decision process in the strategic defence packages.

Now, when we start off we are looking at a
20 mathematical equation. It is a very simplified mathematical equation, there are no complexities in the equation and it is in mathematical terms known as a first order equation. There are no multi kind of, multi order elements in the equation.

And by using a very simplified model, I will try and
25 explain the main elements, there are only four and the

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terminology that applies to it. If we then look at page 151, I have listed the elements and I start off with what is known as a criteria. You have been exposed to this concept by the different project teams, and it only states that when we select
5 a product, we will identify a set of criteria that we would like to see the product comply to.

So what I have done is I took an everyday example, in this case an armed vehicle, vehicles we see on our roads, and on television, and I said what are the key criteria when we
10 purchase a product such as an armoured vehicle. And the classical ones are the manoeuvrability of the vehicle, the protection, its armour and landmine protection and the firepower, what kind of guns can it carry and what kind of
15 firepower will it have.

These are then defined as criteria, and I only have three here. In the case, the examples in the file for instance the lift that would probably be 15 or 20 criteria. We then try to select these products on the basis of these criteria. There are two options, you can say that the criteria are equal weight, and
20 that is then under item two, multi-precarious selection and I give each one the same weight.

Or I can go for a process where I weight the relative criteria, that is called a pair wise comparison. That is a process that is followed in ARMSCOR. You will take each
25 criteria and measure it individually against the other criteria,

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you then complete a matrix, to this extent, this is what the (indistinct) presented to the Commission in terms of the financial criteria. If we then say fine, let us assume we take a pair wise comparison, and we will get an answer that for the purchaser the buyer, that manoeuvrability weighs 50%, the protection 30% and the firepower 20%, so he has now got a weighted criteria, and these criteria we see in the equation for the strategic defence package.

What we then do next, or the budget teams is they will take each of these criteria and measure it. That yardstick that they use can be anything, they can measure speed in kilometres or they can measure protection in millimetres. That would just give a figure of merit.

So, let us assume we have two competitors they will take each competitor, they will take the product and they will measure it, they will measure the thickness of the steel, the speed of the vehicle, the turn circle of the vehicle. That will give each vehicle a figure or merit.

These figures of merit has got no relationship with the other criteria. Now you are confronted with the fact that you have yard sticks that are not similar. So what we do then is we go to point three, we take these different figures of merits and we normalise it. Now, normalisation is a very straight forward process. You can select any parameter as your target for mobilisation, often 100% or 50% or 10% or even

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1%. So what we find in the documents that is in the bundle we have targets of 100 in some case 50 and then even in one case 1. So you say fine my target is 100, I am going to give, or let me take my example, I said I took ten, I said, I will give the bidder, with the highest figure in say mobility, I will give him ten points.

If I do that, I must then figure out what do I give his competitor, and that is very easy, you take the value that the competitor achieved in that category, you divide it by the winner's figure and you multiply it with your target which is then ten.

This process you repeat for every criteria in your bidding system. That will then give you a set of standard figures and (indistinct) at the bottom of page 152, where I simply took the different weighted criteria, the different normalised figures, multiply it and achieve the set of figures that for each bidder would then be in the case of "A" would then be, if you look at the paragraph just above, I take the maintainability of "A" and I multiply it with 50 that is my weighted figure for manoeuvrability and that would give me 500.

I do the same for protection, I take protection figure, I multiply it with 30 and that gives me 166 and the same with firepower. Then for each competitor I complete this calculation, there is nothing complex to it, and I get a total.

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That total in the case of "A" is then 866, the case of "B" is 735. It is then evident that in this bidding process, this calculation process, as far as the military capability of this product is concerned, that "A" in fact has got a higher score than "B".

Therefore, to compare "B" with "A" I would then do a normalisation again, and that normalisation is shown on 153, it is a very easy calculation, I take "B" figure, which is 735, I divide it by "A" figure which is the 866 and I multiply it with 100 and that gives me then a criteria for "B" at 84.47.

These are the figures you will see in the tables that were presented to the Cabinet Committee. It is exactly the same process, it is only more complicated because there were many more criteria and many more competitors. But the process is exactly the same. That then brings us to what is known as the best value military value. And I then ask, can I pass this point?

MR SIBEKO: That seems to be sufficiently explained unless there are questions that the commissioners would like to get clarity on that in terms of the process that gets followed with regard to your best value, and that seems to be clear now.

MR ESTERHUYSE: Chairman, just a correction there that does not bring us yet to best value. That bring us to the best, the highest military score, it brings us to, we have not achieved yet, what is known as best value. It gives us the military

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performance index. We will see later in the tables that we have a figure that is known as the military performance index, and that is that particular figure. To achieve best value bring us to bullet point or number four there in the paragraph.

5 It is a very easy step from that point to achieve best value. We take the military value and we divide it by cost. We will see in the documents that in the case of costs, as far as the strategic defence package is concerned we have used program costs, which implies that it is the tender price, plus
10 some additional costs that is related to the South African activities and logistics etcetera.

 That gives us best value against a program cost. That denominated, the figure used under the line has been an extensive debate during the strategic defence packages,
15 because one can use these different values under the line, like (indistinct) price or life cycle cost or nett present value. That concludes then the concept of best value.

MR SIBEKO: So, the best value figure in other words is a function of the military value (indistinct) denominator of
20 financial consideration being that present value of the (indistinct) even the tender price is that correct?

MR ESTERHUYSE: That is correct chairman, as long as you apply the same formula to all the bidders.

MR SIBEKO: And you testified earlier in your evidence
25 that the issue of the (indistinct) dominators considered for

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purposes of the packages, is that correct?

MR ESTERHUYSE: That is correct chairman, in the initial phase, at the phase that in July 1998, that then got amended to program costs, which is also a valid assumption.

5 MR SIBEKO: Now that we understand the value equation, and the equation that you have presented the best value equation you referred to it as equation "A". You mentioned in your evidence that there was an evolution of (indistinct) up to "C", but the best value equation "A" is the one
10 that was approved by the ARMSCOR board and presented to the Council Of Defence is that right?

MR ESTERHUYSE: That is correct.

MR SIBEKO: And that is the one that according to the minutes of the meeting where this was presented it says the
15 best value equation was to be used as a guide by the various teams (indistinct)

MR ESTERHUYSE: That is correct Chairman.

MR SIBEKO: Right, now that we have understood somewhat the issue relating to the best value, and how one obtains
20 military value, going forward, can you tell us what was the process that was followed now during the course of evaluating the various (indistinct)

MR ESTERHUYSE: Chairman the value system that was based on 50% military and 50% industrial participation divided by the
25 financial consideration was the first equation that was

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approved and that was in October 1997. We then went through the process of issuing requests for information to redefine the baselines the issued requests for offers in the beginning of March 1998 and those offers closed in May, 15 May 1998. That
5 brought us to the point where the tenders were then back in South Africa and under configuration control.

There has been an extensive discussion that we can see from the minutes of the management meeting around the denominator, this question of should we use the nett present
10 value or should we use the cost of the (indistinct) cost. Now I will have to look at the documents to just follow the sequence.

But in brief at a point relatively late in the process, the financial team decided that they would like, instead of applying a financing cost figure, to apply a financing index to
15 the financial considerations, which is then divided the cost, the concept of the cost of the product and the financing of the product.

You will recall that I said the financing was a new concept within the department of defence and ARMSCOR,
20 (indistinct) needed the department to finance, dealt with financing. Therefore the financial team then presented the, made a proposal that the financing index should be considered in a multi criteria model where they normalise the financing index, and that becomes a separate consideration in terms of
25 the selection of contractors.

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This is the element that Pierre Hoffman presented to the Commission in quite some depth. That team then produced an index which they finalised around the end of July 98'. So as far as the equation was then concerned, we then
5 had to consider how to integrate a financing index which is not the finance index.

The balance of the equation in terms of military performance, we have used the denominator as the program cost. In terms of the industrial participation we have used the
10 tender price as the denominator. And then we were faced with the concept of the financing index.

We then ended up with three indexes. I am not shortcutting certain elements, but if we look at figure 5.3 on page 35 of my statement you will find that particular equation.

15 CHAIRPERSON: (Indistinct) I do not quite understand why this evidence in leading us to, all those things that he is talking about (indistinct) have already testified, and explained to us exactly how they arrive at those various indexes.

Now we are repeating the same thing here, one
20 person says I do not think we should have done that, I do not think we should have done that, when people who were in those project teams have already testified. And their evidence (indistinct). I am not quite sure now you know what are you trying to achieve now by going through what other (indistinct)
25 have already testified about. Unless (indistinct)

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MR SIBEKO: Mr Esterhuyse, you have referred earlier to the 50/50 equation, that is equation "A" of the best value that was (indistinct) and you have mentioned the further evolution of the 50/50 equation, could you just briefly deal with that?

5 MR ESTERHUYSE: Chair yes, the 50/50 equation was in fact the equation approved by the board and by the COD. In this process in July the equation is then amended to be 100/100/100, that amendment has been basically an announcement at a SOFTCOM meeting.

10 It has not been submitted to either board or the COD for approval. That certainly is a change to the value system that we started off with, and I think that is an important concept in the process that run up to the selection of the final tenders.

15 MR SIBEKO: Now, if you turn to page 31 of your statement, page 31 they start talking about the supplier selection phase, from a SOFTCOM/IOMC perspective. Could you just briefly run through that?

20 MR ESTERHUYSE: Chairman can I just ask, are we referring to 5.2 on page 31?

MR SIBEKO: Still at 5.1 that is where you see SDP offers, initial briefing 20 May.

25 MR ESTERHUYSE: Chairman, yes, in a meeting that I chaired on 20 May, this is five days after the return of the tenders from the overseas bidders. It is a very short time in fact for the

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project teams. They then scan the tenders and they have identified 37 issues regarding the tender responses. They then identify these issues to the meeting, and we ran through the issues, or the (indistinct) tenders. There was then a request
5 that they can refer questions back to the tenderers.

I then made a ruling there, which is a standard ARMSCOR ruling that says, communication, interaction must be restricted to clarification of information in the offers. No new information that can contribute to altering an assessment
10 against the value system should be entertained, only clarification information, clearly traceable to the official office can be asked for.

And then further it says that these clarifications and requests must be in writing, and be registered with the
15 ARMSCOR procurement secretariat before transmission. That was the ruling at that point in time there were certainly some outstanding items, which then were covered, and there is a specific document that Mr Van Dyk submitted, which Barry De Beer testified that identified the items in terms of the industrial
20 participation that the industrial team would like to request from the tenderers, which they did.

And there is a note that as far as those questionnaires were concerned there were no further information required from the Corvet and Submarine bidders.
25 That then concluded that point in time.

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MR SIBEKO: Now, we have heard in your evidence throughout that when you started to liaise with representatives for Dysel a ministerial committee or management committee was formed, which had no mandate, safe to interact with the
5 Dysel officials. Now, this body then evolved into the IOMC which again had no mandate.

Could you tell us about the establishment of the (indistinct) and what its mandate was, and you will find this as from paragraph 5.2 of your statement at page 31, if you read
10 that with the document that appears at page 299 of the bundle of documents.

MR ESTERHUYSE: Chair, in terms of SOFTCOM on 7 April 96', the secretary for defence issued a letter to the chief of the defence force and to ARMSCOR informing the recipient that the
15 informal constituted management committee that was chaired by General Du Preez is replaced by a formally constituted management committee which then was referred to as SOFTCOM.

Now, I would like then to refer to the actual
20 document, which is on page 299 and just highlight a few of the items out of this document. Chair, the document that says international office management committee, which in fact is the abbreviation IOMC, in items one it says that the formally convened workgroup, which was the workgroup of General Du
25 Preez, which then previously worked in an informal constituted

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management committee as an informal constituted management committee, which is in fact what we have previously described, is now replaced by a formal constitution of this management committee is now being established, item 2.

5 So the document in terms of it (indistinct) says that the IOMC is now replaced by a formal committee. And attached to the formal, to this document is then the draft constitution for this body with the emphasis on draft. And the document is then signed.

10 MR SIBEKO: Now, if you turn to page 301 of the bundle of documents, you will find the draft SOFTCOM constitution and rules, do you see that?

MR ESTERHUYSE: I see that yes.

15 MR SIBEKO: At paragraph 1 of that document the aim of SOFTCOM is set out at paragraph 2 thereof, the workgroups are set out. And paragraph 3 specifically, provides for the functions of SOFTCOM. These include at "D" the coordination or coordinating the involvement of nominated state departments on the SOFTCOM and supporting workgroups, "E" and showing
20 compliance with policy that is generally (indistinct) or specifically promulgated as regular reporting to the COD and external forum as directed. "G" conduct the second order evaluation of competing offers and submit the recommendations to the COD. Now, if you recall with the background of your
25 (indistinct) bodies and principals, was any provision made for

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the IOMC previously to report to the COD?

MR ESTERHUYSE: As previously indicated the COD in fact is not a body in the MODAC structure, the AAC is the top level structure committee and therefore certainly in terms of any of the previous management committee or the IOMC, there was absolutely no consideration that those bodies can report directly to the COD.

MR SIBEKO: Now, what would have changed between the IOMC as it was at the time and the period when the SOFTCOM was purportedly established as a formal structure in terms of this letter dated 7 April 1998?

MR ESTERHUYSE: There was one even preceding this mandate that was, that we have already covered in the minutes and that was a COD meeting on the 20 March 98' where General Du Preez submitted a proposal to the COD to formulate a, to mandate a formal workgroup or management committee for the execution of the project.

That particular presentation or request was then turned down by the COD, or let us rather say it was deferred for later consideration. So the point that this document is issued, this draft management mandate, there was in fact no support from anybody, level of authority higher than SOFTCOM to authorise a mandate to the SOFTCOM committee.

Then if we look at the functions of SOFTCOM and the key one there is the three G that says that this committee

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will conduct a second order evaluation for competing offers and submit the recommendation to the COD. This mandate in fact then states that SOFTCOM can report directly to the Council of Defence which then set up a panel channel to the MODAC structure, this is a direct communication to the MODAC, to the
5 COD.

And, in addition to that, (indistinct) which probably then refers to the Ministerial Committee, there is no other committee involved there. So this document then established
10 an alternative process for the approval of the strategic defence packages.

It also refers to a second order evaluation. It is most likely, it does not say that exactly, that this refers to the structure of the /147 directive. There we also find a reference
15 to a second order workgroup or study group. The second order workgroup as explained right at the beginning can only function if there is a first order workgroup that directs the second workgroup in terms of hierarchy.

As to the best of my knowledge and there is no
20 reference in files or minutes or notes, indicates that there has ever been an establishment of a first order workgroup. So as far as this mandate is concerned, the mandate is not workable. It is not possible for a second order value system or any system to be established if it is not guided by a first order
25 value system.

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However, apart from the second order workgroup issues or second order value system, the execution of the project, the strategic defence projects from this point to a large extent followed what is stated in the mandate.

5 MR SIBEKO: Now, I need to understand your evidence properly, you say as I understand that one of the mandates that seeks to be created in this document is for SOFTCOM to conduct a second order evaluation of competing offers. What would have been the first order evaluation of these competing
10 (indistinct)

MR ESTERHUYSE: Chair, the concept of this first order and second order were linked in the document 417 specifically to the tenders under the government agreement. That was an attempt to negotiate with a single source supplier. When we
15 got provision to go out on tenders in September 97' and it is stated in 417.

That option of the validity of 147 then in fact lapsed because under the multi tender conditions and it is stated in 417 the standard MODAC procedures apply. It is stated in 417
20 that 417 does not apply to multi tender conditions. Shall I try and find the paragraph?

MR SIBEKO: No, can I turn your direction to page 108 of the bundle. Now, 108 is the document annexed to the letter issued by General Du Preez on 28 October 97' and it is entitled
25 MOD (indistinct) international defence equipment offers in the

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MoD, it is date 8 August 97' do you see that document?

MR ESTERHUYSE: Just repeat the page please.

MR SIBEKO: Page 105.

MR ESTERHUYSE: That is correct, I have the page.

5 MR SIBEKO: Now, at paragraph 6 on that page refers to
the policy, (indistinct) for approval by the AAC. And the next
page you will see at page 108, under the heading at paragraph
15 MoD management of assessment officers, that is provided.
Prior to translating an offer onto separate standard armour
10 acquisition projects and assessment procedure incorporating
the following (indistinct) multi tier approach is to be followed
and their reference is made to the first order, the second order
and the third order. Can you explain what was intended to be
conveyed by that?

15 MR ESTERHUYSE: Chair, I can only read from the document
because this document at that time was only issued to
ARMSCOR as n information document as we previously
indicated. So this in fact a concept that originate in the
department of defence that says at order one, that the
20 suppliers should be taken into account in terms of country,
interoperability between countries, it sets a political
interaction with countries also in place.

That workgroup then should give guidance to the
second order group which is 15(b), then to develop a second
25 order value system. As far as my involvement in all these

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committees were concerned I have never had been involved in a discussion that works according to this hierarchy.

MR SIBEKO: Now, if you look at "C" it reports of a third order, and it says the project teams must develop third order value systems for the (indistinct) elements on offer in accordance with the second order value system and proceed to solicit competitive proposals for evaluation of the best solution for approved (indistinct) statement in accordance with the MoD acquisition policy. Are you aware of the existence of this value system, the first order or the third order value system?

MR ESTERHUYSE: Chairman I am not aware of any of these orders in terms of value system.

MR SIBEKO: Now, if you move back to page 301, it says at 3G the SOFTCOM was to conduct the second order evaluation of competing offers and submit the recommendation to the COD. Was any discussion ever held between members of the SOFTCOM of which you are a co-chair of board with regards to what second order evaluation entailed?

MR ESTERHUYSE: Chairman, I have not been involved in any discussion around a second order system that is sub-servant to a first order system that has been supplied from an outside entity. There is also no reference in any of the minutes or notes that we have available, regarding the second order value system.

MR SIBEKO: Now, when you stated in your evidence

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that the evaluation of the various bids of these packages followed largely the scheme set out in this document, which starts at page 299, what did you mean by that?

5 MR ESTERHUYSE: Chairman if we can look at figure 5.1 on page 33 of my statement we will note that the lines of communication is modified substantially through this draft statement which then says that in terms of procedure, the SOFTCOM can compute the figures, against the second order value system, and then submit that recommendations to the
10 council of defence.

That to a large extent is what transpired, but I think we will highlight the detail for that in another section where we actually tracked the process of approval between the SOFTCOM level up to the ministerial committee.

15 MR SIBEKO: Are you aware that during the course of tracking the activities of SOFTCOM in the evaluation of the various bids as to whether any second order evaluation was conducted by SOFTCOM?

20 MR ESTERHUYSE: Chairman, me personally not, I am not aware of any discussion or any document that reflects a second order value system.

MR SIBEKO: Now, having dealt with the establishment of SOFTCOM and its constitution, we now get to the work sessions of 1 and 2 July 1998, that you will find at page 33 of
25 your statement as from paragraph 5.3, can you take us through

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that briefly.

MR ESTERHUYSE: Page?

MR SIBEKO: Page 33 of your statement, paragraph 5.3.

MR ESTERHUYSE: 5.2.3 as already indication is the draft
5 constitution that has been then submitted to the council of
defence, or that states, submit that can recommend, can make
recommendations directly to the COD and the ministerial
committee which is then reflected in the figure just above 523.

As I stated during my involvement in this process,
10 management committee eventually to SOFTCOM it was my
understanding that the SOFTCOM was a coordinating
committee. I was not aware of any approval of this draft
constitution.

Although the draft constitution has been appended
15 to an earlier version of the SOFTCOM minutes it was certainly
not debated within SOFTCOM and I am unaware that it has
been submitted to any of the higher level committees for
approval.

MR SIBEKO: Having stated your understanding of how
20 SOFTCOM worked or was supposed to work, we know that on
the 1 and 2 July 1998 SOFTCOM was involved in the issue
relating to the evaluation of the various bids and the
consolidation of the results that were arrived at by the various
teams can you take us through that?

25 MR ESTERHUYSE: Chairman, for that particular meeting I was

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not present, so I take my information from the minutes and from the evidence of Darby Griesel and other ARMSCOR personnel and I would like to highlight just one or two points from this particular meeting, and it is on my page 34 of my statement.

5 The chief of acquisition announced at this meeting that the best value equation is converted to best value equals technical, industrial participation and financing on an equal ratio of 1, 1, 1.

10 As referred earlier in the discussion around best value systems, one can take that ration in any manner, it can also be 100, 100, 100 which is exactly the same, would give you exactly the same outcome. So that announcement is made as this meeting at the SOFTCOM meeting.

15 And at this meeting it is also the final meeting on record where the results of the tenders are represented in different elements, and not all of the information available right at that point in time. But that is where the information is collected.

20 And then after the meeting between the 2 and 8 July Darby Griesel as he already stated in his evidence completed the set of figures that eventually led to the recommendations of best value procurement.

MR SIBEKO: Now, can I ask you to turn to page 303 of the bundle of documents? That is a document dated 21
25 October 1998 and it says confirmation notes of the

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international offers work session held in (indistinct) 1 and 2 July 1998, could this be the recordal of the proceedings of the SOFTCOM as at that date 1 and 2 July as you have looked at these document?

5 MR ESTERHUYSE: Chairman that is correct, that is the document.

MR SIBEKO: And it is stated that you did not attend this meeting.

MR ESTERHUYSE: That is correct I did not.

10 MR SIBEKO: Confirmation of thread, you will find at the next page 304 where copies of Mr HDWS Esterhuyse is notes, do you see that?

MR ESTERHUYSE: Yes, I see that thank you.

15 MR SIBEKO: Now, if you turn to page 306 you will find a heading at the bottom just above paragraph 31, it says consolidation. Something is said about what will be consolidated. May I ask you to please explain what is meant by the concept of consolidation of results?

20 MR ESTERHUYSE: Chairman, I have seen this statement, my interpretation of the statement, and it is only an interpretation, but it is in fact and explanation how we derive from the 50/50 value equation to an equation that leads to the 100, 100, 100. The concept of a financing score that (indistinct) is totally fine to me, I cannot interpret that statement.

25 What I do see in the bottom line is that the

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chairman states that the consideration should be technical value plus industrial value plus financing value, which is the basis of the equation that was announced at that particular SOFTCOM meeting.

5 MR SIBEKO: Now, perhaps if we take a step back, if I ask you to explain what consolidation as a concept is, divorced from what is contained in this minute, how would you do that?

MR ESTERHUYSE: Chairman, can I then refer you to page 33 in my evidence, figure 5.3, which is a diagram.

10 CHAIRPERSON: What page?

MR ESTERHUYSE: 35. Chairman, this diagram then presents the integration, in fact it means exactly the same as consolidation of the information that came from the different themes in terms of technical financial and industrial participation.

15 So the information from the teams are then integrated in this equation which is then basically, 100, 100, 100 and that is a fairly straight forward process, there is no complication in integrating the information as derived from the different teams, there is no specific challenge in doing that.

20 MR SIBEKO: Now, to understand the concept of consolidation or integration, if you may, one must understand that in the following way. You have pointed out that the teams were put together and separated for deliberate reasons. So
25 you would have your technical teams, and you would have your

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industrial participation teams, and you also have the financial team. Now each team will work in (indistinct) it will produce results in respect of each bid. And at a later stage the various results would be presented to SOFTCOM and SOFTCOM would then integrate the different results from the different teams in respect of each bid.

MR ESTERHUYSE: That is correct chairman.

MR SIBEKO: Now, we have heard of another concept referred to as moderation, when did moderation take place if at all?

MR ESTERHUYSE: Chairman to my knowledge moderation is not allowed in this process. If moderation should mean modifying the figures, that is certainly not within the rules of ARMSCOR or DoD. I am not aware of any specific modifications or changes to figures to try and achieve a different outcome.

There is a reference in one document which is associated with the DIP and the NIP in terms of the document where it sets out the procedure to integrate the DIP and the NIP. There is a reference to an activity that is called audit and moderation, but I am unaware what that content of that particular task was, the way it would affect the outcome.

MR SIBEKO: And to your knowledge was any moderation or the results contemplated at least at the SOFTCOM?

MR ESTERHUYSE: Chairman, not at any of the discussions or

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meetings that I have been involved, and as far as my knowledge stretch, and this is hearsay, not at the meeting of 2 July.

MR MUSI: I understand, I am sorry to interrupt, I understand that moderation was not allowed, but what does it mean, what do you do when you say moderate (indistinct) as opposed to consolidating and integrating?

MR ESTERHUYSE: Commissioner I personally do not know what exactly the definition of moderation is. It is not a word that was familiar to me, and I have never seen it being applied to any value equations.

MR SIBEKO: You have alluded to the process of moderation and auditing in a document that was referred to in the evidence of Mr Barry De Beer. What was your understanding of that concept used in the industrial participation here.

MR ESTERHUYSE: Chairman the field or industrial participation is not really my forte. So what exactly as meant by that particular block is in a certain sense sounds to me like a contradiction that you can have the same people running an audit but in some ways also responsible for a component that I do not really fully understand that is called moderation.

MR SIBEKO: Thank you Mr Esterhuyse, can I ask you to turn to page 34 of your statement. At paragraph 5.4 you deal with the final integration of best value equations, take us

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through that.

MR ESTERHUYSE: The concept was that at the end of the 2 July meeting, that there were now a set of figures that one can integrate into value equation as was discussed at that particular workshop. This activity from what I read, was mainly done by Mr Griesel between 2 and 8 July because on 8 July a presentation is made to the, I think it was the AACB that reflects all the figures in terms of the stables. So that exercise to combine all the indexes together is then the integration phase of the best value equations.

MR SIBEKO: And this will be the best value equation as formulated between 1 and 2 July 1998 is that correct?

MR ESTERHUYSE: That is correct Chairman.

MR SIBEKO: On page 35 of your statement you deal with the SDPP progress reports to AACB, AAC and COB, can you take us through that?

MR ESTERHUYSE: Yes, in that period the chairman of SOFTCOM chief of acquisition then presents on a basis of information. All the minutes for these meetings which are that SOFTCOM the MODAC committees, the information is presented in seven tables.

There is no additional information, it is not in the format prescribed for the SOFTCOM committee. He presents the information on the basis for information, which is then to a large extent what is stated in that draft statement for

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SOFTCOM that you can inform the other bodies, but it is not a requirement to get their, the support and authorisation. That is transpired through that period in the different MODAC committees.

5 MR SIBEKO: Now the minutes of the meeting of AASB of 8 July 1998, you will find it at page 309 of the bundle of documents. Do you see that document?

MR ESTERHUYSE: I see it yes.

10 MR SIBEKO: Alright, according to these minutes presentation is made regarding the various capabilities which were evaluated by the various teams including at page 313 of the lead (indistinct), do you see that?

MR ESTERHUYSE: I see that yes.

15 MR SIBEKO: Now, on that page you will find the cost of the ranking and the (indistinct), which in the cost option ranking Italian NB339FD has a 100 points, and the non-cost option ranking, the British Hawk has a 100 point ranking, do you see that?

MR ESTERHUYSE: I see that yes.

20 MR SIBEKO: Now, if I understand your evidence correctly, no decision was to be taken at the AASB meeting of that date regarding the presentation made.

MR ESTERHUYSE: That is correct chairman.

25 MR SIBEKO: Now, if I ask you to turn to page 324 of the bundle of documents, you will find the minutes of the special

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AAC meeting held on 13 July 1998.

MR ESTERHUYSE: Yes, I have got it.

MR SIBEKO: There is a list of person present and those invited to attend that meeting, I see your name amongst the invitees there. You confirm that you did attend that meeting?

MR ESTERHUYSE: That is correct, I did.

MR SIBEKO: As far as you recall, can you briefly take us through what was discussed at that meeting?

MR ESTERHUYSE: Chair, let me just pick up the main points. On page 327 the chief of defence force said that the preferred defence, the air force's preferred solution would be the (indistinct) aircraft at the lower cost. That is one statement.

CHAIRPERSON: Where are you reading Mr Esterhuyse?

MR ESTERHUYSE: 327 in the top paragraph.

CHAIRPERSON: Is the paragraph under discussion.

MR ESTERHUYSE: It I paragraph 10 at the top, chief of defence force highlighted.

CHAIRPERSON: That would be the third sentence of paragraph 10.

MR ESTERHUYSE: That is correct.

MR SIBEKO: Where paragraph 10 starts by saying:
“Two consolidated summary evaluations, one of the costed military value and one of a non-costed military value are shown, the need for a non-costed matrix is (indistinct)

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Further gathering of information e.g. for the lift is supported.”

Could you comment on what was meant by that?

MR ESTERHUYSE: Chairman at this point in time there was a
5 strong indication from the Minister that the (indistinct) should
be considered also in terms of should it be considered further
as a potential selection, and that we should look at the air
craft in greater detail.

CHAIRPERSON: Adv Sibeko, just before we move away from
10 this matter, I see on page 326 where (indistinct) training, there
are two sets of results, now only to find out from Mr Esterhuyse
if he knows when (indistinct) this question of non-costed option
was put on the table?

MR ESTERHUYSE: Chairman my first awareness of the non-
15 costed option actually came from this meeting. From the
evidence given by Dawie Griesel, he indicates that between the
2 and 8 July, he was requested by the chief of acquisition to
(indistinct) the figures that would not take cost into account for
the lift. I am not aware of any discussion prior to that point in
20 time, so this was for me certainly new information by the time
of this meeting.

CHAIRPERSON: Thank you.

MR SIBEKO: Thank you chair, a further meeting of the
AAC that was held on 16 July 98’ you see that, you will find it
25 at page 341 of the bundle.

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MR ESTERHUYSE: This meeting is of the AASE.

MR SIBEKO: I beg your pardon, it is of the AASE. And I see that you were present at that meeting again.

MR ESTERHUYSE: Yes, chairman I was.

5 MR SIBEKO: Could you just briefly give the Commission a summary of what transpired as far as you recall at that meeting.

MR ESTERHUYSE: Chairman, as far as I can recall and what I can read here this was then a meeting to specifically discuss
10 the lift, but I need to confirm that. Yes, in fact I think that can be summarised on page 343 at the top paragraph B at the sentence that is the second sentence where it says the chairman, and this was then the secretary for defence, stressed the point that the minutes of this meeting did not reflect a
15 preferred option.

I might be at the wrong point. Ja, and then he states at the bottom of that paragraph, this is now paragraph "B" at page 343 that the chairman advised that from the DoD perspective only the costed option could be considered and
20 that the AASB thus supports this recommendation.

The (indistinct) on this particular meeting was the consideration between the costed and non-costed solution that can translate to the Hawk and the lift. And at this particular meeting there was a strong and firm recommendation from the
25 AASB that only the costed option, in which then the MB339 will

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be considered for recommendation to the AAC.

MR SIBEKO: If I could just ask you to turn back to page
342 ...(intervene)

CHAIRPERSON: Adv Sibeko, if you are done with this
5 document, can I (indistinct) you are done with this document.

MR SIBEKO: We are still on the document chair.

CHAIRPERSON: You are still on the document.

MR SIBEKO: Yes.

CHAIRPERSON: Okay (indistinct)

10 MR SIBEKO: Thank you chair.

MR SIBEKO: I was looking at the watch and perhaps we
will seek direction from the chair as to when it would be
convenient to take the adjournment whether ...(intervene)

CHAIRPERSON: Thank you let us adjourn until 14h00.

15 MR SIBEKO: Thank you chair.

CHAIRPERSON: Thank you.

(PROCEEDINGS ADJOURN)

(PROCEEDINGS RESUMES AFTER LUNCH)

CHAIRPERSON: Can you just confirm that you're still under
20 oath?

un

MR ESTERHUISE: I do.

ADV SIBEKO: Thank you Chair Mr Esterhuisse when we
adjourned when we adjourned we were busy working our way
25 through the minute of the AASE meeting of 16 July of 1998

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...(indistinct)..., and this you will find at page 341 of the bundle of documents, right?

MR ESTERHUISE: Correct, I've got it.

ADV SIBEKO: Now under the heading *Project Winchester*
5 you have a paragraph 2 at the bottom of 341 and the following is recorded.

10 "The Chairman introduced the item by referring to the initial progress report on the international offers to the AASC on 13 July 1998 where the AASE failed to present a clear and unambiguous recommendation specifically with regard to the LIFT leaf-in Fighter Trainer. The Chairman stressed that the recommendation regarding Project Winchester must be ...(indistinct)..."

15 What was happening at this point?

MR ESTERHUISE: Chair the Winchester here refers to the LIFT, the HAWK v 339, and there was a presentation then by the Chief of Acquisition to the AAC on the 13th where there was no decision taken regarding the progress around the LIFT, and
20 this meeting is then arranged to address that particular question.

ADV SIBEKO: So this meeting has as its sole purpose to find out ...(indistinct)... issues relating to the LIFT is that right?

25 MR ESTERHUISE: Chair that's close to correct, I think at the

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end there might be two or three other points like the guided weapons industry strategy, but the main purpose of the meeting is the LIFT.

ADV SIBEKO: Now if I ask you to turn your attention to paragraph 4 the last sentence of which reads as follows;

“The SAAF confirm that the first three contenders the MB339FD, the L159 and the HAWK all satisfy the SAAF power to training requirements for conversion from ...(indistinct)... to the LIFT.

10 | Could you just give a context to that?

MR ESTERHUISE: Chairman what the Air Force is saying that any of those three contenders could meet their training requirements of course they come at different costs.

ADV SIBEKO: Now the last two sentences of paragraph 5 states the following:

“Hence the L159 and the HAWK although superior in performance do not receive any additional score. ARMSCOR recommend that based on this sensitivity analyses there is no need to request more information from contended suppliers.”

Tell us what that means?

MR ESTERHUISE: Chair in principle, excuse me, the second sentence says that:

“That in terms ...(indistinct)... of the tenders we have received we have received sufficient

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information to do an evaluation of these products.”

I think that’s basically what it says.

ADV SIBEKO: Okay and in paragraph 6 the following is recorded:

5 “Chief of acquisition contends that the AAC
instruction to adopt a visionary approach that
involves major intentional defence companies in the
LIFT acquisition resulted in generation of two
options in the evaluation team and ...(indistinct)...
10 recommendations. Chief of acquisition further
advised a meeting that the above sensitivity
analyses is new information not presented at any
SOFCOM and that the LIFT project was restricted by
time factors.”

15 Now was this visionary approach ever explained as to what has
been tabled?

MR ESTERHUISE: Chairman there has been previous
references to a visionary approach but no explanation in terms
of what is meant by it and what the contents should be.

20 ADV SIBEKO: From the previous mention of the visionary
approach as you testified being mentioned did you ever get a
sense of what it meant or entailed?

MR ESTERHUISE: Not at this point in time but when we come
to the final COD meeting prior to the ministerial committee
25 there is a little bit more information in terms of what this

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objection might include.

ADV SIBEKO: Now would it also be correct that this visionary approach did not make its way into any of the evaluation criteria that was required to be applied by the various teams, especially the LIFT team?

MR ESTERHUISE: Chairman that would be correct because there is no means to translate the visionary statement into a value equation if it is not broken up into specific details, specific objectives and specific ways.

ADV SIBEKO: Now at 7 the Chairman of the ASB is recorded to have stated the following:

“The Chairman rules that the ASB must submit a logical and rational recommendation to the AAC. Intense discussion of the following issues followed;

a) Solicitation of more information from the LIFT contenders given that the result will not change, could be bad for DOD and the minister must be advised accordingly.”

Could you give context to that?

MR ESTERHUISE: Chairman my understanding of that is that at that point in time the project team said *we have sufficient information in South Africa from the bidders that we can analyse the proposals coming from the bidders*, that we do not have to go back to the companies to get better information.

Now finally at 343 in the middle of paragraph B

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there following this report, it is line, 6th line from the top:

5 “The Chairman stresses the point that the minutes
of this meeting did not reflect a preferred option.
The SOFCOM made two recommendations for the
LIFT project to the AAC on 13 July, the first
10 recommendation a) was an option taking cost into
consideration, and the second recommendation b)
being an option excluding cost as a determining
factors. The Chairman advised that from the DOD
15 perspective only the costed option could be
considered and that the AACB thus support the first
recommendation A.”

Could you once again put context to that?

MR ESTERHUISE: Chairman this was in fact a ruling of the
15 AACB that only the costed option be submitted to the AAC for
consideration. I deduct that when it says *the Chairman refers
to the meeting where it was presented*, that he is referring to
the earlier AAC meeting, but then he made this conclusion, the
meeting made, that only the costed option should be
20 recommended.

ADV SIBEKO: Now before we go to the minute of the COD
meeting of 21 August 1998, the Chairman wanted to ask you
something regarding the meeting that whose minutes we were
dealing with just now.

25 CHAIRPERSON: Thanks ...(indistinct)... you have covered

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my point, thank you.

ADV SIBEKO: Thank you Chair. At paragraph 5.5.6 of your statement at page 36 we refer to a schedule COD meeting taking place on 21 August 2998, will you briefly relate to the events of that meeting?

MR ESTERHUISE: Chair this is the final COD meeting prior to the discussion with the ministerial committee, it is a meeting that ran for an extensive period from 10:00 in the morning till 4 in the afternoon and the main topic of the COD meeting starts at item 7.3 briefing on the government to government office.

In this meeting the same set of information is presented to the meeting, and there is an agenda item that says *consider the removal of the tank project*, that's under 732. Then there is an extensive discussion around the projects and eventually we get onto page 357 item 3.5, in this paragraph there is then a discussion to attempt to reduce the quantities of the procurement and to also then take into account the deletion of the tank and to try and find a way to reduce the deficit in terms of the defence budget. In this particular paragraph it is stated at the bottom line there that the cheapest option MB339 was chosen. That was the point where we said *this is the defence package that we should consider for procurement*, the strategic defence package.

There is an extensive discussion around the deficit and the fact that department of defence cannot afford this

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package. The deficits indication in 737 where it says that if the HAWK should be selected the deficit will be 9.7 against the 3.7 is the 339 is selected, and the recommendation is again confirmed that the recommendation from the AASB is the cheaper option, namely the MB339, and again in 738, the second ...(indistinct)... defence confirms that the recommendation is the cheaper option.

Okay then the discussion around funding continues:

“We eventually got to a conclusion...”

10 That’s in paragraph 73.13 which states that the only decision that is taken in that COD meeting is in fact that the council agree that the tank be removed, and that there should be in future a briefing to the deputy president. There is no recommendation or conclusion regarding the total package.

15 ADV SIBEKO: Now Mr Esterhuise If I may just ask you some, one aspects I inadvertently omitted to take you through in respect of the AASE meeting of 16 July, can I ask you to turn to page 343 once again? Can I then ask you to turn your attention to paragraph D of page 343 ...(indistinct)... where
20 reference is made to the issue of short listing involving the exclusion of contenders scoring less than 69 on the initial military value evaluation, being preferred by the SAAF.

But what I’m interested in which I seek your comment on is with regard to the last sentence of that
25 paragraph which reads:

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“The Chairman rules that the AASE recommendation is the MB339FD as evaluated and noted that this result is the SAAF preference within the envisaged SAAF fighter training system required by the SAAF.”

5 Do you care to comment on that?

MR ESTERHUISE: Chairman that’s correct, that was also my understanding at that point in time.

ADV SIBEKO: So will that mean the Chairman of the AASB had in fact made a ruling that from the AAS the perspective and regarding had to the results that were presented to the AASE for information. As far as the SAAF was concerned the MB339FD would be that preferred aircraft to be presented to the AAAC for its consideration?

MR ESTERHUISE: Chairman affirmative, that’s correct.

15 ADV SIBEKO: Do you recall having attended that meeting if there were any objections to a recommendations such as that being submitted to the AAAC?

MR ESTERHUISE: There was no objection as far as I can recall from that meeting.

20 ADV SIBEKO: Right now the AAC or the Cold has looked at the issues relating to the budget and what impact that would have if the HAWK on the one hand is chosen as oppose to the MB339, now we go to the spectral ministerial briefing ... (intervene)

25 MR ESTERHUISE: Chair can I just add a comment while we

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are still on the COD which is relevant through the ministerial meeting?

ADV SIBEKO: Yes you may.

MR ESTERHUISE: If we look at page 360 although that
5 decision at that point has not been taken there is an important
comment by the minister of defence in paragraph 73.24, the
minister said:

10 “The political decision needed must be not evolve
about the operation aspects of the aircraft that is
part of our recommendation, government must
decide if they want to enter the European market
and if so through which partner. The defence
industry of the world are forming consortiums. If we
15 are not part of one of these consortiums our aircraft
industry will be lost. There is a strong sense here
that the South African industry and government
must structure an alliance with one of these
oversees consortiums in order that the aircraft
industry can survive.”

20 And then I would like to note at the bottom 73.25:

“There is an indication that an AAC (the last
sentence there) was waiting to convene after this
particular meeting, after the command council.”

The meeting ends at 16:00 and has lasted for nearly four
25 hours. In fact there is no indication that an AAC took place,

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there is no records, no minutes, nobody that's aware of a meeting after the COD, it is most likely that when we are later referred in the ministerial committee meetings to the AAC that we are in fact also referring to this COD meeting, it is most likely that it is the same meeting, except if at some stage there is evidence of a AAC meeting after the COD meeting.

The fact that it lasted for such a long duration makes it unlikely that we would have entered into a next conference room and restart the discussion around the strategic defence package, that's a comment.

ADV SIBEKO: And perhaps just before we leave that minute if I could ask you to go back to 737 at page 357.

CHAIRPERSON: I'm sorry ...(indistinct)... if you don't mind ...(indistinct)... 7.3.4 can I just ask you to comment on the last sentence from that paragraph?

MR ESTERHUISE: 7.3.4?

CHAIRPERSON: 7.3.24, that is the paragraph that you were dealing with, I'm just asking if it is possible for him to comment on the last sentence ...(indistinct)...?

MR ESTERHUISE: Chairman I can't really comment, it is the minister expressing his view that he says that we must not prejudge, let the politicians decide, I can read it but I have no further understanding what is implied.

CHAIRPERSON: Your understanding of this process was it that at the end of the day the politicians are going to take

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decisions, or you thought that the board ...(indistinct)... of ARMSCOR is going to take decisions bearing in mind that there have been some previous deviations on the normal ARMSCOR processes?

5 MR ESTERHUISE: Chairman as I indicate in my evidence up to meeting with the ministers my understanding is we're in an information channel that we are dealing with different proposals that nowhere along the line has any firm recommendations been accepted except for the removal of the
10 tank, given to the extent that when we met with the ministerial committee I was still under the impression we are in the process of exchange of information and progress reporting, so at this stage I did not accept that as a kind of a firm statement that we will now have a political decision that's outside the
15 domain of the MODAC process and the ARMSCOR board of directors.

CHAIRPERSON: Thank you, sorry last question from me, at this stage you were aware that the board of directors ...(indistinct)...?

20 MR ESTERHUISE: I am fully aware at that stage that the board is outside the processes.

CHAIRPERSON: Now if you were aware of the fact that the board of directors of ARMSCOR is out of the question at that stage how did you expect that this process will then
25 ...(indistinct)... board of directors of ARMSCOR?

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MR ESTERHUISE: Chair both the, I must just look at the attendance, both the Chairman of ARMSCOR and the, I just want to make sure about the CEO, but the Chairman of ARMSCOR is part of this meeting, so he at least is fully informed. I wasn't sure to what extent the rest of the board was informed.

ADV SIBEKO: We didn't know also that as at that time Mr Ronald Hayward was both the Chairman of ARMSCOR and the CEO of ARMSCOR is that correct?

10 MR ESTERHUISE: Chairman I think at that stage we already, ARMSCOR has already appointed the CEO and that was Mr Llew Swan, I don't see his name on the attendance list, but he was already in his post.

ADV SIBEKO: Now going back to that paragraph 7.3.24 it reads as follows, perhaps just to get a full context there, it says:

20 "The minister said the political decision needed must not revolve about the operational aspect ...(indistinct)... aircraft, that is part of our recommendation."

Just stop there, now part of the recommendation was to be made by whom?

MR ESTERHUISE: Well this recommendation is what we have been promoting for the AACB up into the channel and that recommendation was in fact at that point in time the MB339.

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ADV SIBEKO: It continues to say:

“Government must decide if they want to enter the European market and if so through which panel, the defence industries of the world are forming consortium. If we are not part of one of those consortiums our aircraft industry will be lost.”

Where did the MB339 originate?

MR ESTERHUISE: MB339 is an Italian company, it is one of the major aircraft manufacturers in the world. At that stage they were probably still independent but they were also part of a group called ALENIA and eventually has been fully integrated into ALENIA which is one of the major aerospace companies.

ADV SIBEKO: Now at the time of the consideration of the various bids did the manufacturers of the MB339 have any relationship the South African industry or military industry to your recollection?

MR ESTERHUISE: Chairman that answer is affirmative, the manufacturers of the MB339 were also the manufacturers or designers and manufacturers of the previous generation aircraft that we have produced in South Africa in fairly large quantities, 200 plus aircraft, so therefore the skills and knowhow and to a certain extent production equipment has already been established in South Africa from around the 1960's up to the 80's to manufacture the predecessor of the 339.

COMMISSIONER MUSI: Can I just chip in here, that

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statement on paragraph 7.3.24 does it not represent the genesis of the ...(indistinct)...?

MR ESTERHUISE: Commissioner that is a valid question, I'm not sure what the connection is but I would say that that would
5 be a logical conclusion, of course this is a statement by the minister.

COMMISSIONER MUSI: Thank you.

ADV SIBEKO: Having heard your comment regarding the contents of paragraph 7.3.24 of that AAC COD meeting that will
10 propel us to the special ministerial briefing on 31 August 1998. Now perhaps to take one step back you indicated in your evidence earlier that by August or 31 August 1998 though you had been the Co-Chair of SOFCOM and the various bodies that came before it you were not in active participation with regard
15 to the package is that correct?

MR ESTERHUISE: That is correct Chairman, I was an invitee, I was not an active member of the ARMSCOR executive committee, executive management at that point.

ADV SIBEKO: It is common cause, and I think it will
20 become common cause with the passage of time that in fact a ministerial briefing took place on 31 August 1998, could you briefly tell us first of all you attended that meeting?

MR ESTERHUISE: That's correct, I was there on the invitation of the Chairman.

25 ADV SIBEKO: And that would be Mr Hayward?

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MR ESTERHUISE: That's correct.

ADV SIBEKO: Now in what capacity did you attend that meeting?

MR ESTERHUISE: That was not defined because at that point
5 I was very close to leaving ARMSCOR and my final phase in
ARMSCOR was as I previously gave evidence was to support
the new CEO and he was also at this meeting, and I certainly
then also got invited to this ministerial briefing which my
understanding was that prior to the meeting that we are
10 meeting with the cabinet ministers in order to brief them on the
status of the projects, and that is in fact what the heading of
the document says. It is a briefing to the ministerial committee
regarding the process o the strategic defence package.

ADV SIBEKO: Now as you were no longer actively
15 involved in the acquisition of the various packages what was
the basis of your understanding before you attended this
meeting as to what its purpose was?

MR ESTERHUISE: My understanding was purely a information
session with the cabinet ministers to indicate the progress and
20 status, and there were still some points that that need to be
clarified, not in terms of the value equation but to make sure
before we progress that we have got everything aligned.

ADV SIBEKO: Perhaps I must apologise for being
imprecise in posing the question, who informed you that this
25 was going to be a briefing session or information sharing

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session that you were going attending?

MR ESTERHUISE: To be exact I can't say, but it would be most likely the Chairman of ARMSCOR, he is the only person that I spoke to prior to that meeting.

5 ADV SIBEKO: Right, you have in front of you a bundle of declassified documents that was given to you earlier on, this is made up of the declassified minutes of a recorder of what had transpired at the ...(indistinct)..., do you have that in front of you?

10 MR ESTERHUISE: In a minute, yes Chairman I've got it.

ADV SIBEKO: Now you will see at the top of that bundle you will find what appears to be an index of the various documents contained therein, you will see from the evidence, or from the index the following is written, version 1, version 2,
15 version 3, version 4 and version 5, would you like to comment with regard to the various versions of what appear to be in relation to the minutes of the special ministerial briefing dated 31 August 1998?

MR ESTERHUISE: Chairman this set of minutes being
20 produced this morning, I have tried to align it with the documents as I know them and my first document would then be item 4 which is the minutes of, well they all go to 31 August, but that would then be let's see if it collates, we will have to do some paperwork now.

25 ADV SIBEKO: Mr Esterhuise before dealing with the

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actual detail of what's contained in there I just am trying to illicit, comment on the existence of the various versions of what is supposed to be the same meeting.

MR ESTERHUISE: Yes, what transpired in the meeting is that we met in hotel conference room in Durban, a relatively small conference room, very late in the afternoon, I think it is 19:00, the meeting started and it was announced that the chief of acquisition will make a presentation. He then handed out documents and that document is in fact on page 155 in my bundle consisting of 98 pages and he also had with him a set of slides ...(intervene)

CHAIRPERSON: ...(indistinct)... quite get an answer from you or maybe I misunderstood your answer.

MR ESTERHUISE: Sorry then Chairman I then misunderstood the question, I thought that the question regards to what was the environment in which this took place, but then maybe I can ask that the question just be rephrased?

ADV SIBEKO: By all means Mr Esterhuise I will do that, on 31 August 1998 there was a special briefing of cabinet ministers by various officials from the DOD and ARMSCOR is that right?

MR ESTERHUISE: Chairman that's not right, the correct, there was only one presentation and that was done by the chief of acquisition, he was the only person that spoke.

ADV SIBEKO: I will repeat the question and ask you to

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make sure you understand the question. On 31 august 1998 there was a special ministerial briefing of the ministers of, of some ministers of cabinet as we will later establish that ministerial briefing of 31 August to the deputy president on the
5 defence packages, this is the meeting that you attended is that correct?

MR ESTERHUISE: That's correct yes.

ADV SIBEKO: Now there was this one meeting that you attended, yet we have various versions of the recordal of those
10 proceedings is that correct?

MR ESTERHUISE: That's correct yes Chairman.

ADV SIBEKO: Now the question I asked earlier is are you able to offer a comment without going to the details of the meeting as to why there exists such a number of versions of
15 what purport to be a recordal of the one meeting you attended?

MR ESTERHUISE: Chairman if I understand the question correctly then the answer is that at the particular meeting no one took minutes and there were in fact no agenda or statement or detail on the process in the meeting. The minutes originate
20 from after the meeting, at the meeting that I've been, that meeting certainly had no secretary of person to record the discussions.

ADV SIBEKO: I will make an attempt perhaps at a later occasion to you try and illicit an answer to that question, but
25 be that as it may you say you attended the meeting, could you

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just give us ...(intervene)

CHAIRPERSON: I'm sorry Adv Sibeko, I'm very interested in ...(indistinct)... this question, ...(indistinct)... no person was taking minutes, but then there was a ...(indistinct)... number of
5 people. Their recordal of the minutes seems to be totally different, I think maybe the witness needs to tell us why they're recording of their discussions ...(indistinct)... almost three or four versions. The fact that ...(indistinct)... I don't think is a good answer.

10 ADV SIBEKO: Chair I am leading to that point, because it seems to be putting the ...(indistinct)... I think we would rather break it down to the building blocks of that meeting. Now you were present at this meeting, various other people were present, do you have an idea, an estimate, without looking at
15 the actual minutes as to how many people were there?

MR ESTERHUISE: As a first guess probably 10 people.

ADV SIBEKO: Does this include the members of cabinet who were there or it excludes them?

MR ESTERHUISE: That would include.

20 ADV SIBEKO: Right, now just briefly describe to us the environment in which you met and what transpired there?

MR ESTERHUISE: Chair that was probably the question I tried to answer earlier. We met in a conference room in a hotel, in a relatively small conference room and we were sitting
25 around a U-shaped conference table, and in the centre there

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was a projector on which the secretary, the chief of acquisition presented these slides to the meeting. Prior to the meeting he handed our books that covers the same set of slides plus some additional information.

5 ADV SIBEKO: Now the meeting to which you were invited and attended and as you described was there any agenda that had been issued as to what was going to be discussed?

MR ESTERHUISE: Chairman no it was stated to be a progress meeting, reporting on progress of the strategic defence
10 packages.

ADV SIBEKO: Who was in charge of the meeting?

MR ESTERHUISE: The deputy president at that stage, Mr Mbeki chaired the meeting.

ADV SIBEKO: You're saying Mr Mbeki chaired the
15 meeting, are you aware if a secretary was appointed at that time before the commencement of the meeting to record the proceedings of this meeting?

MR ESTERHUISE: To the best of the my recollection, not.

ADV SIBEKO: Are you aware of the presence of any
20 recording device that mechanically recorded the proceedings of the day?

MR ESTERHUISE: Chairman I'm not aware of any recorder.

ADV SIBEKO: Now could you relate to us how the proceedings went underway and what was discussed?

25 MR ESTERHUISE: Chairman basically the chief of acquisition

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presented the documents, the slides in his possession which are the pages from the document that he handed out to members of the meeting.

ADV SIBEKO: The document you're referring to is it the
5 document that appears as from page 155 which is on tag 16 of the bundle of documents?

MR ESTERHUISE: Chairman that's correct.

ADV SIBEKO: Now how long did this meeting last for?

MR ESTERHUISE: Chairman my guess would be
10 approximately an hour.

ADV SIBEKO: So the presentation relating to these documents plus the slide presentation would have taken about an hour and this was done by Mr Shaikh?

MR ESTERHUISE: Chairman that's correct.

15 ADV SIBEKO: Now could you then take us through what happened?

MR ESTERHUISE: Chairman he presented slides that mainly included the documents that we discussed previously as presented to the council on defence, the set of slides, plus
20 some additional information on industrial participation. There was no discussion regarding the presentations and in fact after he has concluded his presentation there was also basically no discussion. They were already time pressed to leave the meeting, and that was my recollection of that particular
25 meeting.

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ADV SIBEKO: Now when you say they were already time pressed to leave the meeting who are you referring to?

MR ESTERHUISE: Chairman I can't recall exactly but my impression at that point in time was that the minister's had another obligation, but I can't say with 100% certainty.

ADV SIBEKO: Now as they left what did you do?

MR ESTERHUISE: Chairman we also then returned, or not all of us, but I would say half of us then return to the airfield to take an air force aircraft back to Pretoria.

10 ADV SIBEKO: Can you recall who was with you when you went to take the aircraft back to Pretoria?

MR ESTERHUISE: Chairman that's too far in the past, I can't recall who joined us on the aircraft.

15 ADV SIBEKO: Mr Llew Swan was present at the meeting on the day, do you recall if you went back to Pretoria with him on the day?

MR ESTERHUISE: Chairman I can't recall Llew Swan, I can recall the chief of the defence force, and the secretary for the defence force, but the other members I don't know, it was a relatively small aircraft.

ADV SIBEKO: So the secretary of the defence force that would be Mr Pierre Steyn?

MR ESTERHUISE: That's correct yes.

25 ADV SIBEKO: Now what happened some time later on after you had attended that meeting?

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MR ESTERHUISE: Chairman approximately two, three days later the chief of acquisition visit my office with a document, printed document, and he also had in hand a computer disc, the document that he then presented to me he stated is the minutes
5 of the meeting in Durban.

I indicated to him that at that particular meeting no minutes were taken, he stated to me there was another discussion or meeting after we left where the decisions to the procure the equipment has been recorded, and he gave me the
10 document.

ADV SIBEKO: Now while you were present at the meeting, was there any decisions take regarding the capabilities which forms part of the packages?

MR ESTERHUISE: Chairman there was basically no discussion after the presentation, I left under the understanding that we have done a progress report.
15

ADV SIBEKO: But while you were present there was any decision regarding any of the capabilities taken as or with regard to whether they will be recommended to cabinet and so
20 forth?

MR ESTERHUISE: Chairman my recollection is no.

ADV SIBEKO: And what is your recollection with regard to the discussion surrounding the LIFT program?

MR ESTERHUISE: Chairman I cannot recall any discussion
25 around the LIFT at that particular meeting on 21 August.

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ADV SIBEKO: Now considering that prior to that meeting, considering that during the course of that month there had been a special ...(indistinct)... meeting where the issue of the costed and non-costed LIFT was discussed and a ruling was made by the Chairperson of the ASB regarding what had to be recommended to the AAC and the further discussion was had at the COD just prior this one regarding the HAWK versus the MB339, do you not recall at all if these issues were raised at the ministerial meeting of 31 August of 98?

5
10 MR ESTERHUISE: Chairman what I can recall is that it was not raised.

ADV SIBEKO: So when information was given to the ministerial committee on the day regarding the various capabilities as set out in your annexure EE16, the issue of the non-costed, the costed LIFT forum did not arise?

15 MR ESTERHUISE: Chairman no, both products or both costed and noncosted options are included in the documents presented to the cabinet committee.

ADV SIBEKO: So the matter did arise during that meeting?

20 MR ESTERHUISE: As an element in the total package yes, but not discussed in any detail.

ADV SIBEKO: Now you were then at the position where you are asked to prepare a minute by the chief of acquisition, take us through that?

25

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MR ESTERHUISE: Chairman I have not been asked by him to make any amendments or changes to the minutes, he gave me the minutes, I read the minutes and I noted that the decisions were taken, and the one that particularly drew my attention is
5 the statement in the minutes which is item 11 ...(intervene)

ADV SIBEKO: Mr Esterhuisse can I ask you to refer to that bundle, that classified documents?

MR ESTERHUISE: I'm just trying to identify the particular, specific, this one?

10 ADV SIBEKO: What page is that?

MR ESTERHUISE: 7 on this one.

ADV SIBEKO: Now if you look at page 7 could you just identify that document for the record please?

MR ESTERHUISE: Chairman this by all means looks like the
15 document that chief of acquisition presented to me shortly after the meeting in Durban.

ADV SIBEKO: It is, it bears the heading at the top there, *minutes of the special briefing on 31 August 1998 at 19:00 to the deputy president Mr T Mbeki on the progress of the
20 strategic defence package program for the South African National Defence Force held at Inzinga Conference room*, do you see that?

MR ESTERHUISE: I see that yes.

ADV SIBEKO: Now if you turn to page 9 of that document
25 you will find a signature there, could you identify the signature

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for the record please?

MR ESTERHUISE: I can identify the name which then says S Shak.

ADV SIBEKO: And on top of that name, that typed name
5 in brackets there is a signature that looks like Shak is that correct?

MR ESTERHUISE: That looks like Shak I was not familiar with his particular signature.

ADV SIBEKO: Alright.

10 MR ESTERHUISE: Now that document at page 7 has the following heading, *introduction*, it says that the Deputy President welcomed all present, and then there is a presentation, at paragraph 2 it says:

15 “The co-Chair of the SOFCOM committee Mr Shaikh made a slide presentation of the SOFCOM findings of the request of offers received out of ...(indistinct)... from the bidding countries and their respective defence system supplies.”

Is this what happened on the day?

20 MR ESTERHUISE: That’s correct yes.

ADV SIBEKO: At paragraph 3 it notes:

“Hardcopies of the slide presentation was made available to the Chair and other ministers.”

4:

25 “The presentation included all aspects of the

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technical/military evaluation, the industrial participation evaluation IP and the financing evaluation.”

5:

5 “The successful bidders per program were identified and the respective waiting ...(indistinct)... discussed.”

Is this what transpired on the day?

MR ESTERHUISE: That would be the information included in
10 the pack that is presented.

ADV SIBEKO: Yes. Now at paragraph 6 the following is recorded:

“The strategic defence package SDP consisted of 7 individual programs namely light utility helicopter
15 (LUH), advanced light fighter aircraft (ALFA), Maritime Helicopter (MH), Corvette Submarines, lead-in fighter training, and main battle tank (MBT).”

At paragraph 7 the following is recorded:

20 “Mr Shaikh indicated to the members that the successful bidders were determined by taking the highest scores obtained from the total scores received per program. The total score was obtained by adding the three independent group scores (IE,
25 IP equals 100, ...(indistinct)... equals 100.

Financing equals 100, total score 300).”

And 8 the following is recorded:

5 “Two options were proposed in the SOFCOM
presentation for the LIFT program, option A
considered a military value system including
program cost, and option B considered a military
value system excluding promo cost. Option A
considered and selected an aircraft from the lower
cost cluster, while option B considered and selected
10 an aircraft from the higher cost cluster. Option A
(MB339) offered only a pilot training capability at
lower cost. Option B (HAWK) offered a dual role
aircraft, both pilot training and a limited operational
use capability at a higher cost. The IP proposals of
15 option B were higher in total dollar value and higher
in total percentage against the tender price
offered.”

Do you confirm this is was ...(indistinct)... the presentation
that you referred to?

20 MR ESTERHUISE: Chairman I would say that can be
interpreted from the presentation, where it was certainly not
stated in the verbal format as shown here.

ADV SIBEKO: But you say it could be an interpretation
from the presentation that is contained in tab 16?

25 MR ESTERHUISE: Chairman that’s correct.

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ADV SIBEKO: Now then there is a heading *decision taken*. Perhaps before we deal with the contents of what decision was taken let me ask this question, while you were present at the meeting and before you discussed and went to the aircraft as described earlier on was any decisions taken at the meeting that you attended on 31 August 1998?

MR ESTERHUISE: Chairman my recollection is no.

ADV SIBEKO: Right this is what is recorded at 9:

“The recommendations for the successful bidders as approved by the Arms acquisition council dated 21 August 1998, was supported and approved by the members present.”

Do you recall any such thing happening?

MR ESTERHUISE: Chairman no, that is the point I raised earlier, there is no evidence of a Arms acquisition council on 21 August.

ADV SIBEKO: So what is recorded per ...(indistinct)... is not correct?

MR ESTERHUISE: Chairman if you read AASB and AAC and CO as a single entity that could be correct, I do not know what is interpreted here.

ADV SIBEKO: I understood your evidence to be that there was no Arms acquisition council meeting on 21 August 1998 at which that was done?

MR ESTERHUISE: Chairman I cannot confirm that with 100%

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certainty, it is as I previously indicated very unlikely that we would have a COD meeting that runs for our hours on the subject and then disburse and join up as a arms acquisition council, but there is no firm evidence.

5 ADV SIBEKO: There was however a COD meeting held on 21 August 1998 is that correct?

MR ESTERHUISE: That's correct.

ADV SIBEKO: And that meeting, the minutes of that meeting we have traversed during the course of your evidence
10 is that correct?

MR ESTERHUISE: That's correct.

ADV SIBEKO: Now paragraph 10 that recordal states the following:

15 "The recommendation by the Arms acquisition council to remove the tank program from the strategic defence package was supported and approved by all members present."

Do you recall this happening?

20 MR ESTERHUISE: Chairman no I cannot recall such a statement.

ADV SIBEKO: At paragraph 11 the following is recorded:

25 "After a lengthy discussion by the ministers it was decided that option B (HAWK) should be recommended as the best option to meet all military and national economic strategic requirements for

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South Africa.”

Do you recall any such decision being taken?

MR ESTERHUISE: Chairman that discussion did not take place in the meeting that I attended, but it might have been in the meeting afterwards, or the discussion afterwards.

CHAIRPERSON: I’m sorry I missed the last sentence?

MR ESTERHUISE: The meeting that I attended at the, in Durban that point was not discussed in the meeting, it is not impossible that this point has been discussed outside the meeting.

ADV SIBEKO: But do you recall there being a lengthy discussion or are you aware of a lengthy discussion that was undertaken by the ministers regarding these matters?

MR ESTERHUISE: Chairman no.

ADV SIBEKO: Paragraph 12, the following is recorded:

“The shortfall of funds was the SDP as indicated in the DOD planning deficit will be funded from outside the present defence allocated budget.”

Now do you recall if this was discussed at the meeting that you attended?

MR ESTERHUISE: Chairman no.

ADV SIBEKO: And at paragraph 13 the following is recorded:

“The following bidders per program were

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reprimanded in for further consideration, A) LUH,
AGUSTA 109 (ITALY), B) ALFA SUB JAS 39 GRIPEN
(SWEDAN/UK) C) MILITARY HELICOPTER,
...(INDISTINCT)... 300 (UNITED KINGDOM) D)
5 COVETTE GFC ...(INDISTINCT)... 200 (GERMANY)
E) SUBMARINE GSC 2091400 MAIN ORDINANCE
DEPOT (GERMANY) F) LIFT BAE HAWK (UNITED
KINGDOM).”

Was this a decisions taken while you were present at the
10 meeting of 31 August 1998?

MR ESTERHUISE: Chairman no.

ADV SIBEKO: 18 records:

“It was recommended that the department of trade
and industry and department of defence approach
15 the successful bidders to reform, to reconfirm
proposed IP proposals as submitted by bidders in
their business plans and determined the relative
cash flows and Nett financial benefit to the State
and South African Industries.”

20 At 15:

“It was recommended that a two month period be set
aside for department of trade and industry and
department of defence to conclude those new phase
of defence package program. This phase will
25 consist of the series of discussions between the

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successful bidders as listed above and DTI/DOD.”

Do you recall these matters being discussed, or recommendations being made during the meeting that you attended?

5 MR ESTERHUISE: No Chairman, I cannot recall such a recommendation.

ADV SIBEKO: Now what were you asked to do with these minutes when they were given to you?

10 MR ESTERHUISE: The chief acquisition asked that I retype from the disc that he gave me and that I replace his name on the minutes and then sign it and return it to the office of the minister of defence.

ADV SIBEKO: Did you accede to the request that was made to you?

15 MR ESTERHUISE: I didn't, I took the disc and the document but I did not execute what he asked.

ADV SIBEKO: What were the reasons for you not to accede to the request and execute what was asked of you?

20 MR ESTERHUISE: I read the document whilst in my office and I said as far as the paragraph 11 is concerned that cannot be a reflection of the meeting that I attended, and we didn't debate it to an extent, he left and I was left with the document and the disc.

25 ADV SIBEKO: What did you then do with the document and the disc?

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MR ESTERHUISE: I took the document and the disc, in the next day or two and met with Mr Swan who was the CEO, I confirmed with him that I've got this document and I said to him he was at this meeting and that at no stage has there been a
5 decisions regarding the HAWK. I said as far as the other projects are concerned we can probably conclude that if we look at the presentations in the tables that the other projects comply with the winning bidders.

And I said *I would like to ask whether we can have*
10 *another discussion with the minister of defence since I think the interpretation that the British industries will give us a better South Africa Participation in the Aerospace industry is incorrect.*

ADV SIBEKO: What did you then do?

15 MR ESTERHUISE: I sat down with him and we drafted a paragraph where we said, *let's approach the minister and see whether we can convince the minister that we reinvestigate this particular statement that the benefit, industrial benefit and military benefits from the BAE HAWK is to such an extent*
20 *better than what we are proposed, what the Italians are proposing to us, especially taking into account that the AE proposal is double the cost of the Italian proposal.*

ADV SIBEKO: Now did you prepare a minute before you caused Mr Swan to approach the minister?

25 MR ESTERHUISE: I sat in his office and we both rephrased

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this particular paragraph not to attempt to restructure the minutes but as a point for discussion with the minister of defence to see whether we can convince the minister to reconsider.

5 ADV SIBEKO: Now can I ask you to turn to page 10 of the bundle of documents in front of you? Now you will see that if you go to page 11 of that document, or perhaps before we go to page 11 at that document, at page 12 of that document there is provision made for you to sign the document?

10 MR ESTERHUISE: Chair that's correct.

ADV SIBEKO: Now this document which starts at page 10 does not bear your signature, is it correct that during the course of preparing your evidence there is a document similar to that which bears your signature?

15 MR ESTERHUISE: Chairman that's correct.

ADV SIBEKO: Have you looked at both these documents to confirm that they are indeed the same document?

MR ESTERHUISE: Chairman I have not, but in terms of structure and paragraph numbering it looks similar.

20 ADV SIBEKO: Can I ask you to turn your attention to paragraph 11 of that document which reads as follows:

25 After a discussion it was decided that both the HAWK option B and the MB339 option A should be investigated further with the ...(indistinct)... of structuring and industrial alliance between the

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countries supplying the aircraft and the South African Aerospace industries. Both countries will be requested to submit further information in this regard.”

5 Now is this the document that was drafted by you with the amendment of paragraph 11 as it appears there?

MR ESTERHUISE: Chairman it is not only drafted by me, this is a combined sentence that both of us, the CEO and myself formulated as a discussion point with the minister of defence.

10 ADV SIBEKO: Now as you attended the special briefing on 31 August 1998 we would accept that paragraph 11 as formulated in this letter is not a true reflection of that transpired at the meeting?

MR ESTERHUISE: Chairman if that refers to the COD meeting
15 on 21 August then in fact it says in that meeting the minister’s view there is that we must structure an alliance of consortium with and oversees company. Both these companies, both BAE and MBDA I quite capable of strutting such an alliance, and we already in the past had an alliance with the Italians in the
20 manufacturing of the predecessor of this aircraft, therefore they would have been in a good position to also structure a proposal.

ADV SIBEKO: Now but the meeting of 31 August 1998
what is recorded at paragraph 11 of the document we are
25 dealing with is not what was actually discussed at the meeting

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of 31 August 1998 is that correct?

MR ESTERHUISE: Chairman at the meeting I attended there was no discussion on this particular list.

5 ADV SIBEKO: So the recordal as it appears on page 12 is not a recordal of the proceedings of 31 August 1998?

MR ESTERHUISE: Chairman that was not the intent, the intent was a discussion with the minister around paragraph 11, we said can we have a discussion that we can reconsider the selection of the HAWK in terms of the argument that we should
10 have an industrial alliance with an overseas company.

CHAIRPERSON: ...(indistinct)... Mr Esterhuise please just listen to the question and answer the question. The question is simple, it is not complicated, this paragraph does not reflect what happened at that meeting on the 31st, yes or
15 no.

MR ESTERHUISE: Yes, I said yes that's correct, it doesn't.

ADV SIBEKO: I understand the intention behind this ...(indistinct)... trying to establish was this according to your recollection was not discussed at the meeting of 31 august
20 1998?

MR ESTERHUISE: That's correct.

ADV SIBEKO: Now paragraph 12 of that document reads as follows:

25 "The shortfall of funds towards the DP as indicated in the DOD planning deficit will be funded from

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outside the present defence allocated budget.”

Does this also record what was discussed at that meeting?

MR ESTERHUISE: Chairman there was no discussion on this point in the meeting I attended.

5 ADV SIBEKO: Now this was not discussed at that meeting but you find the recordal thereof in your draft, could you explain how that comes about?

MR ESTERHUISE: Chairman we took the documents that Mr Shaikh compiled and we only amended paragraph 11 as a point
10 for discussion, we were not trying to reconstruct the minutes.

ADV SIBEKO: Alright, now paragraph 13 also referred to the following bidders per program having been recommended for final consideration at paragraph F of that is the LIFT and it says BAE HAWK and MB339 Italy, could you just give a context
15 to that?

MR ESTERHUISE: Chairman that is most likely a line that we modified to bring it in line with paragraph 11.

ADV SIBEKO: And you will confirm also that this does not accord with the proceedings of the meeting of 31 August
20 1998?

MR ESTERHUISE: That's correct.

ADV SIBEKO: So this could be read as an interpretation that you put into these minutes in order to reflect an intention that you had with Mr Swan to approach the minister of defence
25 to have this matter reopened?

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MR ESTERHUISE: Chairman that's correct.

ADV SIBEKO: During the course of preparing your statement you have become aware of further versions of this recordal is that correct?

5 MR ESTERHUISE: Chairman that's correct.

ADV SIBEKO: Can I then ask you to turn to page 21, it starts at, it is under cover of page 20, and you will see page 20 is dated 12 October 1998, it is a letter addressed to Mr T Mbeki from Mr J Modise minister of defence.

10 MR ESTERHUISE: Chairman I became aware of these minutes only at the time of the discussion or interview by the ...(indistinct)... team. I have not seen this prior to my departure from ARMSCOR.

ADV SIBEKO: Now if you turn to page 23 of that letter, of
15 that document you will find provision being made for signature by S Shaikh, Mr R ...(indistinct)... and Mr S Setao, Mr A Erwin, Mr J Modise and Mr T Mbeki, you will see that it bears the signatures of everyone else accept for Mr T Mbeki do you confirm that?

20 MR ESTERHUISE: Chairman I can confirm that.

ADV SIBEKO: Now can I ask you to turn to page 22 of that document and have a look at paragraph 11 of that same document which reads as follows:

25 "After a discussion it was decided by the ministers present that the HAWK option B should be

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recommended as the preferred option. This decision to recommend the HAWK was based on national strategic considerations for the future survival of the defence aviation sector and the best teaming up arrangements offered by the respective bidders. Strategically important industrial participation problems offered with the best advantage to the state and local industries was also a determining factor in the final recommendations for the preferred bidders program.”

Was this ever discussed at the meeting of 31 August 1998?

MR ESTERHUISE: No there was no discussion on this.

ADV SIBEKO: Not?

MR ESTERHUISE: Not in the meeting I attended, it might be another meeting after the meeting.

ADV SIBEKO: This is significantly different from the draft we looked at that was presented to you in terms of ...(indistinct)... that is different from the initial draft that was presented to you.

MR ESTERHUISE: Yes this differs substantially from the first draft that as presented to me.

ADV SIBEKO: Now if you have a look at paragraph 12 of that same document it reads:

“The shortfall deficit of funds towards the SDP as indicated in the DOD planning was noted. This

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5 matter was to be raised with the department of finance to determine the mechanism for financing the SDP over the projected period in view of the shortfall. The results of this interaction will be crucial to the final discussions. The Minister of trade and industry would also liaise with the department of finance on this matter.”

Now what is your comment regarding this paragraph in respect of the previous paragraph 12?

10 MR ESTERHUISE: Chairman I can't really comment on this, this is a domain of the department of finance, the figures are not mentioned so it is difficult to make any kind of comparison.

ADV SIBEKO: But in respect of the minutes given to you to finalise, and if you look at page 15, page 18, page 8 I beg
15 your pardon that you have already dealt with, page 8.

MR ESTERHUISE: Chairman the only conclusion that I can come to is that in the rewrite of the minutes that 12 being expanded with a more comprehensive explanation, the content I can't comment on.

20 ADV SIBEKO: Do you recall the expanded discussion ever taking place at the meeting you attended on 31 August 1998?

MR ESTERHUISE: Chairman the answer is no.

ADV SIBEKO: Now after you had had this discussion you
25 had with Mr Llew Swan and you redrafted paragraph 11 and 12

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of what was supposed to be the meeting of 31 August 1998
what came of the discussion you sought to be had with the
minister of defence?

MR ESTERHUISE: Chairman Mr Swan went on his own to the
5 minister of defence so I was not party to the meeting with the
minister, he came back to my office a day or two later and he
basically informed me that the decision to procure the HAWK
stands and that was basically an information statement, he
didn't give me any explanation or content of the discussion with
10 the minister.

ADV SIBEKO: What did he do thereafter?

MR ESTERHUISE: Chairman that point in time to a large
extent I have not been very actively involved in the decision
making process around the defence packages, my main focus at
15 that stage was to support the newly appointed general manager
of Aeronotics and Maritime and in fact I can't recall that I have
been to any other meeting or downstream discussion regarding
the strategic defence packages.

ADV SIBEKO: Did you speak to anyone about the
20 appointment of the HAWK as recorded in the minutes of 31
August 1998?

MR ESTERHUISE: Yes, externally to ARMSCOR I made an
appointment with the secretary of defence and express my
concern that we are facing minutes that's not the true
25 reflection of the meeting that we attended, and that was the

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only discussion I had with him.

ADV SIBEKO: Can you recall what his response was to the issue you raised with him?

MR ESTERHUISE: Chairman I can't really.

5 ADV SIBEKO: Can I ask you turn to page 377 of the bundle of documents, that is at tab 34. Now the letter on page 377 is dated 7 September 1998, it is a memorandum from the secretary for defence to chief of acquisition, it is headed *special briefing to the Deputy President on the progress of the*
10 *strategic defence packages program 31 August 1998*. The following is recorded, it is:

- 1) Mr Esterhuisse handed me a copy of the minutes of the abovementioned meeting.

If we stop there, will you confirm this is what happened?

15 MR ESTERHUISE: Chairman I take it that's what happened, I can't remember the exact handing over of the minutes, but that certainly sounds correct.

ADV SIBEKO: Paragraph 2 the following is recorded.

20 "I question the completeness and inaccuracy of paragraph 11, I cannot recall that a decision was made, the merits of either the HAWK and the MB339 were discussed. The fact that the MB339 meets the SAF LIFT requirements adequately (with reference to the predetermined criteria) is not reflected. The
25 HAWK is not the best option from a military point of

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view. The fact that is acquisition cost woul solicit substantially more IP ...(indistinct)..., the SAAF however will have to absorb considerably a higher operating cost during its life cycle.”

5 Now would you like to comment with regard to the substantially more IP which is a ...(indistinct)... carried by the HAWK as oppose to the MB339?

MR ESTERHUISE: Chairman in the tables in terms of Rand value if you combine the defence industrial component with the national industrial component that Rand value in fact is higher than the proposal from the Italians.

ADV SIBEKO: While we are on that point, can I ask you to turn to page 368 of the bundle of documents, and if you could explain what the document is and how it seeks to ...(indistinct)...

MR ESTERHUISE: This one page summarises the findings between the HAWK and the MB339 in terms of the issues raised during the COD meetings and ministerial meetings. It is figures ...(indistinct)... these component are directly taken from the presentation to the ministerial committee and if we look at the left hand side we will see a heading that says *HAWK costed option*, and below that *HAWK non-costed option*.

Then as earlier indicated in the calculations for best value if we take the military performance index of the aircraft and the military value index we now have that to

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compare that with the MB339 on the right hand side where we have the same relationship MB339 costed option and below that MB339 non-costed option.

5 What we will then note in terms of costed option, in terms of military performance the MB339 gives us 100 and the military performance on the HAWK is 90.2, in terms of military value this is now for costed, the MB339 gives us a 100 and the HAWK gives us 45.1.

10 If we then look at non-costed which is the two blocks below, in terms of non-costed, the MB339 this is now we don't take cost into account gives us a military performance index of 100 versus the HAWK of 90.2, since we now have not taken cost into account the military value index there is no cost taken into account for the HAWK is then 90.2, similar to the performance index and the 339 is 100.

15 So as far as the analyses are concerned around military performance in both non-costed and costed the MB339 outperforms the HAWK. This is one of the main issues and there is an argument that there is a potential multirole capability for the HAWK, it is mentioned in the documentation, but we have never mentioned the two aircraft on the same scale in terms of multirole performance, it was not done.

20 Then apart from the military considerations, the argument of involving an overseas company to support our local aviation or aircraft industry, we will see the DIP allocations for

25

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the HAWK on the left hand side in the pie diagram and on the right hand side the DIP allocations from the Italian company.

What is of note the other companies are electronic companies, other South African defence companies, but if the emphasis is on the survival of the South African aircraft industry, aircraft manufacturing industry, that would entail the Denel Aviation.

We can then see under the HAWK the allocation from BAE in terms of dip to Denel aviation is 11.075 and the DIP allocation from Aeromacchi to Denel is then 65.25%. this being one of my main arguments that the validity of the argument of an industrial consortium or the survival of the South African Aircraft industry can according to this and without ...(indistinct)... analyse is most likely better served by the Italian proposal.

And that is what actually then motivated me to take the action to see whether we can have another discussion or even a further study on the industrial aspects of the two bids.

ADV SIBEKO: So even applying the visionary approach that may have been contended for with regard to the LIFT program the MB339 with its dip commitments appears to be better than the BAE ...(indistinct)... is that correct?

MR ESTERHUISE: Chairman that would be my argument.

ADV SIBEKO: And this is information extracted from the presentation made to the ministerial committee that is on tab

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16 of the bundle of documents?

MR ESTERHUISE: That's correct Chairman.

ADV SIBEKO: Right, you were no longer involved in the acquisitioning process, what did you then do in your capacity as an outgoing general manager at ARMSCOR when you hears
5 that the HAWK had been preferred over the MB339?

MR ESTERHUISE: Chairman I was concerned that ... (intervene)

COMMISSIONER MUSI: ... (indistinct)... is my understanding
10 correct that these ... (indistinct)... this page, this chart ... (indistinct)... the non defence ... (indistinct)... is that correct?

MR ESTERHUISE: Chairman that's correct, if I understand your question correct that in this presentation we have taken
15 the military industrial participation and we have not taken the NIP into account, the NIP in terms of Rand value was certainly higher from BAE than from the Italians.

ADV SIBEKO: Right as you were leaving ARMSCOR what did you then do after you became aware of the preference of
20 the HAWK ... (indistinct)... the MB339?

MR ESTERHUISE: Chairman I certainly had a concern that the HAWK selection was not done strictly in terms of the S value equation and that we in fact have a situation that we are facing with an equation that called non-costed, a non-costed
25 equation which was at no stage submitted or approved by the

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board of ARMSCOR and my concern was that I would like to make sure before I leave that this ...(indistinct)... or this development does reach the board in terms of an understanding and that they be aware of what is transpiring in a domain that is really an ARMSCOR board responsibility.

And in that respect I then approached the internal auditors of ARMSCOR, and I requested that an audit be done to consider the, to look at the processes to ensure that, to protect whether we are complying or not and if not complying that that message can get to the board of ARMSCOR, and that was then executed by Gert Grobler and his team and he presented his findings here to the commission, by the time he completed his findings I have already left ARMSCOR.

ADV SIBEKO: You have seen the report during the course of preparing your evidence, you will find that at tab 35, and as you pointed out the contents of that report has been presented before Commissioner. The question now is now that you have seen the report does what is set out in the findings of the report address the concerns that you had when you asked for this audit to be conducted?

MR ESTERHUISE: Chairman I would say to a large extent, as far as ARMSCOR participation is concerned their finding was that no person in ARMSCOR were involved in any modifications or alternations of information in favour of any particular bidder.

My other objective was that this concept reach the

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board of ARMSCOR, that I understood very much later that he then submitted to the audit committee and in that regard that would have reached the board of ARMSCOR. Whether the board of ARMSCOR would from the audit report could make a very firm conclusion that we have deviated, that I can't say and I have never received any further feedback on this report.

ADV SIBEKO: Now having gone through the documentation and the processes that you have described regarding the acquisition of the packages is there anything else that you would need to add which you would like the commissioner to consider regarding this aspect of your evidence?

MR ESTERHUISE: Chairman what I can say is after the AAC meeting where the new equation is being proposed 100, 100, 100, that was already very much late in the stage, I took these equations and I compare the equation 100, 100, 100 versus the equation that was approved by the board and by the COD which was known as the 50/50 equation.

As it turns out when we look at the financing index the one computed by Pierre ...(indistinct)... team, the results of the financing index are very similar, and the reasons given in his report that basically the assessment of financing although it came from the bidders were actually assessment of the banks behind these bidders.

They were all very solid European banks, the risk

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regarding the banks were all relatively low, the interest rates were very similar and the conclusion that the finance team came to is that we are in fact looking at indexes that are very close, you can actually consider them a constant.

5 So then I took the two equations, the 100, 100, 100, and 50, 50 deducted the finance index and then compare the outcome between the two equations and came to the conclusions that the outcome is the same. That the fact that we removed the financing index brings us back to the same
10 equation as the 50, 50 that was approved by the board and by the COD. So that was my final conclusion regarding the outcome of the evaluation systems.

ADV SIBEKO: Now with regard to the value for money that may have been obtained what would your comment there
15 be?

MR ESTERHUISE: Chairman when I did that calculation the outcome was in fact measured in value of money, best value for money.

ADV SIBEKO: Now what do you say ...(intervene)

20 CHAIRPERSON: Sorry, we didn't hear your last words?

MR ESTERHUISE: Sorry Chairman, I said when I did the comparison between the two equations that was in terms of best value for money, so both equations give us the same best value for money.

25 ADV SIBEKO: Now would you then say having looked at

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all of the, make the comparison etc, that what was paid for the arms was in fact good value?

MR ESTERHUISE: Chairman I would argue yes, for one reason, in that time period the late 90's there were a huge over
5 supply in the military market, because most of the European companies and then Russians and Americans were scaling down on orders, so these companies all had over capacity, the market was very competitive, the fact that we have changed the single source government to government approach with
10 ...(indistinct)... to a multi sourced tender process really gave us very competitive bidding.

As far as the definition of the products are concerned of course these emanate or originate from the defence force, from an ARMSCOR perspective I believe that we
15 concluded with very competitive and very cost efficient solutions, we did not in this procurement process take into account operating costs, that was not the brief of ARMSCOR, we procured against what the defence force requires, if one takes the operating costs of this relatively sophisticated
20 equipment into account that certainly has placed another major burden on the department of defence.

ADV SIBEKO: That would be the evidence presented by Mr Esterhuisse Chair.

CHAIRPERSON: Is there anybody who wants to cross-
25 examine Mr Esterhuisse? Adv Sibeko ...(indistinct)... discussing

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with my colleague here, we are saying that seeing that it appears as if there are one or two people who might want to cross-examine Mr Esterhuise but ...(indistinct)... the short notice ...(indistinct)... our sitting today who were unable to attend today's hearings.

We thought that maybe let's adjourn the cross-examination, or possible cross-examination of Mr Esterhuise on ...(indistinct)... 5 May, so that just before we ...(indistinct)... on the next witness let's see ...(indistinct)... anybody who wants to cross-examine Mr Esterhuise and if so then let's start with him on 5 May, I wonder if that will be suitable to ...(indistinct)...?

ADV SIBEKO: Chair perhaps the tidier way of dealing with it I would submit is that Mr Esterhuise be excused subject to any notice by any party given reasonably that for cross-examination, because it becomes a little difficult to anticipate whether the lawyers for human rights by way of example would still want to cross-examine Mr Esterhuise, so if any party wishes to cross-examine Mr Esterhuise they must give sufficient notice of such an intention with the basis why they want to cross-examine Mr esterhuise so that Mr Esterhuise can be informed sufficiently while I have time to be ready from such cross-examination.

So that if he is excused subject to that proviso I would have no difficulty Chair.

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CHAIRPERSON: You know I understand your suggestion, but then I would want to some timeframes, I'm trying to avoid a situation where one ...(indistinct)... comes up with an application to re-examine and then a month down the line we
5 had another application to re-examine.

Shouldn't we perhaps say that you know we excuse the witness and anybody who has any intentions of cross-examining must bring that application or submit application with the commissioner on or before 10 May, something like
10 that. Then from there the application will be considered and the matter will be taken further from there?

ADV SIBEKO: Chair I would have no difficulty with the evidence of Mr Esterhuise being stood down for some time, I just anticipate that the time of May might just be too far,
15 perhaps if an intention or notice is given by 5 May which is Monday he would have had sufficient time.

This is considering the fact that from the letter that I read into the evidence earlier this morning the indication of 5 May seems to have been made, so I would submit that if a
20 transcript is posted say by tomorrow there is the whole of Friday at the latest that there is the weekend in between for people to make up their minds so that by Monday we are all here, perhaps they give notice on Monday to cross-examine Mr Esterhuise and then we can take matters from there

25 COMMISSIONER MUSI: ...(indistinct)... but I think we should

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keep in mind even in these letters it is a question of if you may have to cross-examine. There isn't any certainty that people actually want to cross-examine. People would still have to look at the ...(indistinct)... and decide whether or not to cross-examine.

At the end of the day ...(indistinct)..., so I would rather be inclined to the view ...(indistinct)... and anybody who want to cross-examine should bring their application in the relevant time when they are ready to do so, and in view of the fact that after all they will not even cross-examine.

ADV SIBEKO: I am in agreement with that, safe to say I see my colleague Mr Masilo itching to press the button, I anticipate he might want to re-examine Mr Esterhuse, so when provision is made from cross-examination I think he also must be factored into the equation Chair.

MR MASILO: Chairperson if I may I am in agreement with the sentiments expressed by Judge Musi so far as excusing the witness provisionally subject to any person who so desire to cross-examine the witness, making an application or giving notice either on or before 10 May and that once such application is considered and granted and upon such person being granted if granted leave to cross-examine that the ARMSCOR which is assisting the witness be allowed then opportunity to then re-examine at that point, at this point that we do not have any re-examination, but to the extend that if

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such would happen that there is cross-examination that we may need to re-examine on such issues that wouldn't have arose.

CHAIRPERSON: ...(indistinct)... to everybody
...(indistinct)... make the following order:

- 5 1) Mr Esterhuise is excused until 8 May 2014,
...(indistinct)... back here on 8 May 2014 for 10:00.
- 2) ...(indistinct)... any part who wishes to cross-examine Mr Esterhuise that party must make a written application which must received by ...(indistinct)...
10 commission on or before 16:00 on 6 May 2014.
- 3) The said application will be officially adjudicated upon on the day that Mr Esterhuise will be appearing, and once the parties on that leave to cross-examine Mr Esterhuise that party will be expected to go ahead with the
15 cross-examination of Mr Esterhuise on that particular day.
- 4) Lastly obviously when there is any cross-examination Mr Esterhuise's legal representative will be granted opportunity to re-examine if they so wish.

Okay I think we are trying to avoid the situation where the
20 witness is ...(indistinct)... too long a period, I mean the scenario finalised ...(indistinct)... better for everybody.

ADV SIBEKO: I agree Chair.

CHAIRPERSON: Thank you. Now before we adjourn what is the position, when is the next sitting?

25 ADV SIBEKO: Chair I had been advised that on 5 May

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would be evidence led, I think it is the evidence of Admiral ... (indistinct)... I don't know whether it is Mister or Admiral, this would be led by the tam responsible for the NAVY witnesses.

5 CHAIRPERSON: Can I ask the secretariat to make sure that the summary on the evidence on Admiral ... (indistinct)... is put on our ... (indistinct)... before the end of this period. Thank you, then Mr Esterhuise unfortunately you will have to come back ... (indistinct)... I hope on that day we will be in a position
10 to finalise your evidence.

MR ESTERHUISE: Chairman that's fine with me I will mark it out.

CHAIRPERSON: Thank you, we then adjourn.

END OF PROCEEDINGS